



UNIVERSITY
OF WARSAW

WE ARE ALL EQUAL



**Anti-discrimination Guidebook
for students and employees
of the University of Warsaw**

UNIVERSITY OF WARSAW

EQUALITY, TOLERANCE AND RESPECT

**ANTI-DISCRIMINATION GUIDEBOOK
FOR STUDENTS AND EMPLOYEES
OF THE UNIVERSITY OF WARSAW**

edited by

Karolina Kędziora, Anna Grędzińska

Warsaw University Press
00-497 Warsaw, Nowy Świat 4
e-mail: wuw@uw.edu.pl
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TABLE OF CONTENTS

PREFACE *prof. Marcin Pałys, UW Rector* 4

INTRODUCTION *Karolina Kędziora* 6

Marta Witkowska

1. DISCRIMINATION AS A SOCIAL PHENOMENON 8

Stereotypes, prejudices and discrimination 9

Sources of negative attitudes 13

Consequences of stereotypes and prejudices
– is there anything to worry about? 15

Who can become a victim of stereotypes, prejudices
and discrimination? 15

A few words about good practices 18

Recommended literature 19

Karolina Kędziora

2. LEGAL ASPECTS OF PROTECTION AGAINST DISCRIMINATION 20

a. Legal protection against discrimination of students, including doctoral studies 22

What are legally protected features? 22

What should be understood by vocational training? 23

Forms of discrimination 24

- Direct discrimination 24
- Indirect discrimination 25
- Harassment (so-called bullying, insults, abuse) 27
- Sexual harassment 29
- Encouragement to the breach of duty of equal treatment 31

Prohibition of retaliation 32

Claims of students to a university under the Law on the Implementa-
tion of some EU Provisions on Equal Treatment 33

Claims of students under provisions other than the Law on the Imple-
mentation of some EU Provisions on Equal Treatment 34

Civil Code – violation of personal rights 34

Penal Code – list of examples of forbidden acts that may occur
in the field of education 35

b. Legal protection against discrimination of persons employed, including those in connection with doctoral studies 38

What are legally protected features 38

Areas of employment protected against discrimination under the Labour Code 40

Forms of discrimination 40

- Direct discrimination 41
- Indirect discrimination 42
- Harassment 43
- Sexual harassment 43
- Encouragement to the breach of duty of equal treatment 44

Obligation to equal pay 44

Obligation of rational improvement for people with disabilities 45

Prohibition of retaliation 46

Exceptions to the obligation of equal treatment 46

Claims of persons employed at the university under the Labour Code and the Law on the Implementation of some EU Provisions on Equal Treatment 47

Claims of persons employed under provisions other than the Labour Code and the Law on the Implementation of some EU Provisions on Equal Treatment 48

Julia Berg

3. INSTITUTIONAL PROTECTION AGAINST DISCRIMINATION 50

a. Institutional protection against discrimination at the University of Warsaw 52

Rector's Committee for Preventing Discrimination 52

Equal Opportunity Chief Specialist at UW 53

University of Warsaw Law Clinic – Student Legal Aid Centre 54

Academic Ombudsman 54

UW Office for Persons with Disabilities 55

Centre for Disputes and Conflicts Resolution at the Faculty of Law and Administration UW 55

Academic Legal Counselling 56

b. Institutional protection against discrimination at the national level 57

Polish Ombudsman 57

Government Plenipotentiary for Civil Society and Equal Treatment 58

c. List of selected non-governmental organisations acting in the area of anti-discrimination 59

PREFACE

It might seem that the concept of discrimination is so understandable that it no longer needs explanation and justification of its negative effects. Unfortunately, despite the constitutional principle of equality, an inferior treatment of persons or social groups, caused by strong prejudices and stereotypes, is a phenomenon found in many spheres of life. The academic community is neither free from it.

We give you Anti-Discrimination Guidebook – a publication addressed to students and employees of our university as part of the strategy of equality activities implemented at the University of Warsaw.

The authors of the guidebook want to increase knowledge and awareness about discrimination and unequal treatment, their manifestations and possibility to respond to them. The guidebook encourages to contact relevant offices and organisations (university and non-university) that provide help and professional legal advice.

I would like the publication to start a discussion on equality policy at the University and to contribute to the fight against discrimination in all aspects of the university life. University is a place for gaining and deepening knowledge, as well as space where attitudes with which young people enter adult life are shaped. Making them sensitive to the issues of protection of rights of individuals and groups vulnerable to discrimination is one of important goals that, in my opinion, should be pursued by the university.

I would like the entire academic community to develop a disagreement attitude to the existence of any form of discrimination, inferior treatment or exclusion by including discussions on equality and anti-discrimination policy to debates on the functioning of universities.

I hope the Anti-discrimination Guidebook will be helpful to anyone who has experienced unequal treatment or notices it in his/her environment. I believe that by recognising negative consequences of discrimination, not tolerating such behaviours, and showing how to counteract such phenomena, it will be possible to consolidate respect, esteem for equality and diversity attitudes in the academic community.



prof. Marcin Pałyp,
Rector of the University of Warsaw

INTRODUCTION

No worries! This publication is not a law textbook, although it reaches to the provisions. The publication was designed for ANYONE who, whether working at the university or studying, wants to take care of him/herself and other participants of the academic life at the University of Warsaw. The authors, while preparing the guidebook, wanted to show what discrimination is, how much this phenomenon is common, which perhaps we do not realise, and why should be counteracted. University is an environment in which there is a constant interaction between students, PhD candidates, lecturers, researchers, administration or service workers, within and between these groups. The relationship of power does not only concern contact of students with a lecturer or administration staff, but also contacts between students themselves. Just the fact that a person belongs to a majority group, for example because of colour or age, s/he may already have an advantage, which, combined with even unconscious prejudice, may lead to discrimination.

This Guidebook provides examples based on real-life stories from the counselling activity or news coverage throughout the country, to make it easier to understand whether the situations we face every day are simply rudeness or maybe already unequal treatment prohibited by law. The purpose of this publication is to help assess the situation that can be found while both studying and working at the university. The Guidebook provides guidance on how to provide support and to whom address in the case of recognition of discrimination or unequal treatment. The guide refers to provisions to illustrate better the limits of legal protection, which, we hope, will strengthen the sense of security of all addressees of the publication. We believe that through the knowledge gained, all members of the academic community will be able to defend themselves if necessary, but also respond to observed violations and signal them to authorities of the university or faculty. What the university intends to achieve is the sensitisation to harmful treatment of as many people involved in the academic life as possible, so that they do not remain indifferent to it. It may happen that you will need support, too. NOBODY assumes that s/he will experience discrimination. It is worth responding to the harm and unequal treatment of a colleague from a course or a co-worker. Taking care of our community, we also care about ourselves.

Karolina Kędziora

1.

**DISCRIMINATION
AS A SOCIAL
PHENOMENON**

Marta Witkowska

STEREOTYPES, PREJUDICES AND DISCRIMINATION

In common language, concepts such as stereotypes, prejudices and discrimination are often used interchangeably. However, these terms vary widely in relation to persons or groups. **Stereotypes** refer to **convictions** and **expectations** (e.g. "I think that representatives of the group X are very intelligent but also dishonest and generally not nice"). **Prejudices**, on the other hand, refer to **general emotional approach** (e.g. "I don't like persons from the group X"). **Discrimination**, by contrast, describes **behaviours** directed to a particular group (e.g. "I avoid contact with persons from the group X, and when such contact occurs, I try to keep physical distance"). Of course, all these three aspects are strongly intertwined and constitute elements of the general attitude to a group or person we call an approach.



Stereotypes

It is often the case that before we make contact with a person, we already have some expectations and beliefs about him/her. When asked about various ethnic or national groups we have never encountered, we are ready to list at least some of these features. Similarly, on the basis of individual interactions with a representative of a given group, we are ready to make conclusions about the whole of it, unreasonably generalising our experience. Such cognitive structures, which consist of various beliefs and expectations towards individuals and groups, lacking a basis of adequate observation, are called stereotypes.

Walter Lippman, an American journalist, wrote for the first time about stereotypes as a social phenomenon, defining them as "images in our head", a belief that does not result from direct observation of an object. Such stereotypes play an important role in the social functioning of a man, allowing (at least apparently) for understanding social world without the need to spend many cognitive resources. With the simplistic, ready-to-use knowledge included in the stereotypes, we can formulate judgements about individuals and groups, avoiding an effort of deepened observation and analysis of their individual behaviour. This type of cognitive saving is important in enabling us to function effectively in a world that constantly supplies us with a huge amount of single stimuli that we are unable to process. By arranging them, stereotypes accel-

erate our reactions and facilitate movement in such a complex environment. At the same time, judgements based on a stereotypical knowledge are exposed to a high risk of error – an inaccurate assessment of a person through the prism of belonging to a particular group. For example, studies show that Poles perceive Roma as incompetent. In a nationwide survey conducted in 2009 by the Research Centre for Prejudices, this group was rated worse than all national and ethnic groups included in the study: Germans, Jews, Ukrainians, Belarussians, Russians, Vietnamese and Poles. This kind of stereotypical image of Roma, as a person of a very low competence, is in contradiction with the long list of the world-known experts and authorities in the field of culture and science (including the Nobel Prize winners) who have Roma roots. This stereotype can easily lead to an inferior treatment of people of Roma origin, of whom more and more want to receive higher education at Polish universities.



Prejudices

The knowledge that we collect as we gather new social experiences involves a variety of emotional responses. The knowledge of the good and desirable qualities and actions of our loved ones makes us like them even more, while when learning about negative traits and actions of others, we feel stronger and stronger antipathy against them.

Similarly, stereotypes, although not being a reliable source of information about others, are associated with certain feelings, called prejudices. Prejudice is a negative emotional attitude to a group or a person, which, similarly to a stereotype, is ahead of contact with an object itself. We are prejudiced, because “in advance”, before we meet someone, we already do not like him/her. A particularly striking example of prejudices are negative feelings towards refugees declared by respondents of the Polish Survey of Prejudices 2017 (more than one in four respondents feels disgust and contempt for them, 29% declares anger, 46% feels fear). In the same poll, 95% of respondents admitted that they did not know any refugees and 91% could not even declare that one of his/her relatives knows at least one refugee. Strong negative feelings towards this group can not be the result of their own experiences or their loved ones, but they are rather a result of an increasingly widespread stereotyping of this group.



Discrimination

Both stereotypes (i.e. overly generalised beliefs about groups/individuals) and prejudices (i.e. negative emotional attitudes towards these groups/individuals) may lead to an inferior treatment of those who are concerned by these stereotypes and prejudices. Such negative effects on people due to belonging to a particular group is called discrimination. We can deal with it at the interpersonal (direct) level, but also at the institutional (indirect) one.

STEREOTYPE



PREJUDICE



DISCRIMINATION

“Foreigners are unfriendly

... so I do not like them

... and I treat them worse”

Institutional discrimination means an unequal distribution of rights and opportunities between individuals and groups that are included in the rules of functioning of a given society. This is the case when legislation, criteria or widely accepted social practice are particularly harmful to a certain group of people in comparison to others. A typical example of such discrimination is the situation of women in the Polish labour market. As reported by the Central Statistical Office of Poland (GUS), in 2014, the average gross hourly wage was 13.9% lower for women than for men (see page 12).

Interpersonal discrimination refers to direct interaction between people and can take different forms – from avoiding visual contact with a person and not responding to a “good morning”, to more explicit forms of action for his/her detriment, such as unequal treatment in recruitment procedures, lower wages or ignoring his/her opinions in a discussion. It is especially easy to observe such kind of abuse in the situation of difference in status, where persons from groups suffering from stereotypes and prejudices depend on other people – supervisors at work or lecturers at the university. Since membership in a majority group (ethnic, cultural or ideological) is associated with a higher social status, it also promotes inferior treatment of **others**. Xenophobic attacks on foreign students, in which aggressors are mostly representatives of a local community (students from the same course, bus passengers or simply passers-by), are one of the examples of this phenomenon.

An increasing form of interpersonal discrimination is **hate speech**, that is disseminating statements that spread, propagate and justify racial hatred and other forms of intolerance due to various features such as:

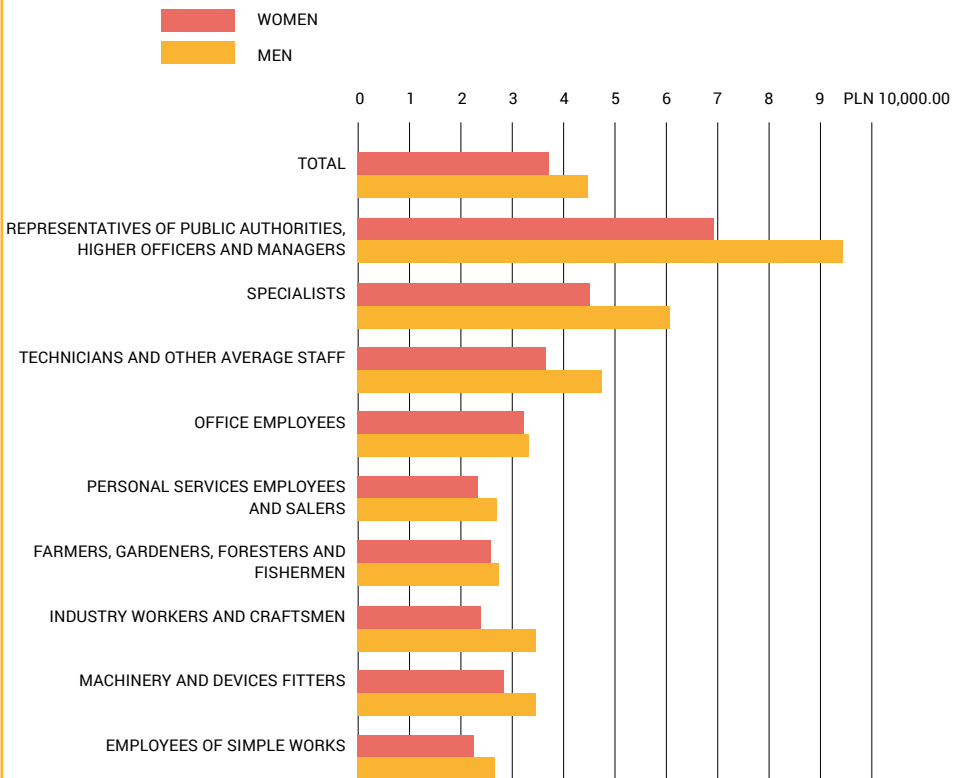
- ethnic origin (xenophobia),
- nationality (chauvinism),
- gender (sexism),
- gender identity (transphobia),
- psychosexual orientation (homophobia),
- age (ageism),
- beliefs (e.g. anti-semitism, islamophobia). This type of discrimination seems especially dangerous because it is often underestimated due to its verbal nature, although it strongly contributes to deterioration of the well-being of those affected.

The Central Statistical Office of Poland (GUS) survey of 2014 shows that an average salary of women in Poland is as much as 17% lower than an average salary of men.

We observe wage disparities in each professional group, although they vary in degree. These differences are even more visible when we analyse the percentage of the best-paid people.

In Poland, 10% of the best-paid women earn a total of 77% of the total remuneration of 10% of the best-paid men. Inequality in the labour market is compounded by the fact that women are more than twice likely to work part-time than men. While two most important causes of inequalities mentioned by the respondents are the inability to find a job or their own preferences, women also mention the need to care for children or other people (13%), while among men this response is practically absent (3%).

MONTH GROS REMUNERATION DUE TO GENDER AND PROFESSIONAL GROUPS IN OCTOBER 2014.



Source: http://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5821/1/6/1/kobiet_y_j_mezczyzni_2016.pdf.

SOURCES OF NEGATIVE ATTITUDES

Referring to the information provided above, sources of stereotypes and the resulting prejudices and discrimination can be sought in the normal functioning of the human cognitive system and its limitations. We are not able to process all the information about the social world around us, so generalised stereotypic knowledge allows us to be at least knowledgeable in this complex and rapidly changing environment. In addition, one of the basic human needs is to maintain a positive self-esteem. Its source may be a positive assessment of the group to which we belong, and this in turn is easily achieved by inferior grading of other groups. Numerous studies have shown that this kind of favouring of groups we belong to occurs at a very automatic level and often even without individual's consciousness – it is natural for us to judge others worse, because then we compare favourably to them. We also naturally and very quickly start to favour the groups we belong to. An American psychologist Henri Tajfel has shown that this applies not only to groups with which we share a common history and a series of common experiences, but the experiences that were arbitrarily created for one experiment (see page 14). Worse treatment of groups that we do not belong to can also be translated evolutionally. We trust people more willingly and cooperate with those who are similar to us and belong to the same community. Members of the groups we do not belong to can cause us anxiety and other negative emotions simply because we do not know them.

The ability to categorise people according to their affiliation can be observed even in very young children. Already a 7-months-old babies are able to assign people to the simplest categories: men and women. In the course of development, children learn to recognise next categories and associate them with specific emotions. Therefore, the first important source of learning stereotypes and prejudices is family – as has been shown, family members demonstrate a high level of consensus on stereotypes. A similar function is performed by the media, which by presenting social groups in a stereotypical way, consolidate their social image in such a way.

Another important mechanism of creating and perpetuating negative attitudes is the history of relationships between groups. Stereotypes and prejudices can be secondarily reinforced by an existing discrimination and serve as justification for it. This kind of justification of a personal better position makes it possible for privileged groups to enjoy undeserved privileges, while avoiding unpleasant feelings such as guilt or injustice. For example, in the age of slavery, landowners could use stereotypical negative beliefs about black people to justify their free work. Today, lower remuneration for women's work can be explained and justified by our persistent cultural belief about lower professional competence. This mechanism makes stereotypes and prejudices particularly ineffective for change.

EXPERIMENT

It may seem that perception of the world in the category of social groups and favouring those we belong to is harmless. Each of us creates different social groups with the loved ones – family, friends, residents of the same block of apartments. A better treatment of people we know and whose reciprocity we can count on may seem natural. Henri Tajfel, however, has shown that the importance of belonging to the same group is not limited to familiar, close people we can trust. It turns out that among strangers we are more inclined to treat those we know as belonging to the same group as us (even if the group was invented by an experimenter!), and worse those, who were assigned to another group.

- 1.** In the American experiment, subjects were presented with reproductions of two examples of abstract painting – one by Paul Klee, another by Wassily Kandinsky. The task of subjects was to identify a painting that they liked most. The subjects were then informed who was the author of the painting they had selected. They did not know, however, that the experimenter gave a random answer to each examined, no matter which image they had chosen. As a result, the subjects were divided into two groups, each with both Klee and Kandinsky fans.
- 2.** At the next stage of the study, participants were asked to select one of the proposed strategies for dividing prizes between them. Did their random membership to the group which allegedly liked more Klee or Kandinsky paintings, have some influence on their decisions? It turned out that yes. Respondents awarded more prizes to the group they were assigned to, and less to the second group. In addition, they chose a strategy that would maximise the difference between what their own group would receive and those of the other group, even though they could give the same amount of prizes to both. It happened although they did not have any contact with each other (each person participated individually in the study), they did not know who belonged to their group and who belonged to another one, and did not have any direct benefit from favouring members of their own group.

CONSEQUENCES OF STEREOTYPES AND PREJUDICES – IS THERE ANYTHING TO WORRY ABOUT?

Stereotypes, prejudices and the resulting discrimination are typical elements of human functioning in the social world, on the one hand to facilitate adaptation to a rapidly changing environment, and on the other – an effective protection against potential threats. We all have contact with them and we succumb to them to a various extent. Unfortunately, like all heuristics based on simplification and generalisation, they are associated with a high risk of error.

Due to their prevalence, stereotypes and prejudices are often underestimated. Research of social psychologists, however, persuades about their key role in deepening of social divisions and deterioration of the well-being of people at risk. The experiment of Jeff Greenberg and Thomas Pyszczynski showed that just hearing a racist comment about a minority representative (e.g. a black lawyer) has a negative impact on the assessment of his professional competences. A hateful language not only enhances stereotypical thinking in majority groups, but also directly affects the situation of victims of such speech, i.e. minority groups. Among minorities towards which a negative stereotypical labelling is particularly strong, a higher proportion of suicides have been observed, interpreting an experience of being a topic of the hate speech in terms of trauma, which in subsequent consequences can result in aggression directed towards the majority, or internalised aggression – leading to depression and addiction. Despite its dangers, hate speech is often underestimated and law enforcement agencies rarely intervene on their own initiative. The victims themselves usually do not seek help in public institutions, guided by the belief that the search for such assistance would be ineffective.

WHO CAN BECOME A VICTIM OF STEREOTYPES, PREJUDICES AND DISCRIMINATION?

Each of us belongs to different social groups and under certain conditions can become a victim of stereotypes and prejudices and the resulting discrimination. We are particularly vulnerable when we stand out against a uniform environment. Therefore, the groups particularly threatened by unequal treatment are minority groups, whose ethnic, national, philosophical, cultural or sexual orientation affiliation is particularly different from that presented by the majority of the society in which they live.

Predictions are particularly strong in societies where there are not many opportunities to contact representatives of prejudiced groups (e.g. because of post-conflict isolation, such as in the Northern Ireland or Bosnia and Herzegovina) or because of low minority participation in the population of the country or region – as in Poland or in the Eastern Germany. Lack of ability to verify negative beliefs about these groups fosters stereotypes and prejudices that lead to even greater exclusion. Surveys conducted in recent years by CBOS¹ (Public Opinion Research Centre) confirm this mechanism on the example of the two least-liked minorities in Poland – the Roma and homosexuals. Two thirds of Poles have never had contact with a person of a Roma nationality, and 75% do not know anyone with homosexual orientation.

Discrimination is not limited to isolated minority groups whose unequal treatment is easy to be spotted and stigmatised. A particular example of deeply culturally ingrained unequal treatment, grounded so well that it seems a natural state of things, is sexism, i.e. stereotypes, prejudices and discrimination on grounds of gender. Despite an obvious discrimination of women in the

¹ CCBOS (2008). Attitudes towards Roma in Poland, the Czech Republic, Hungary and Slovakia. Communication from research, http://www.cbos.pl/SPISKOM.POL/2008/K_104_08.PDF; CBOS (2010). Attitudes towards gays and lesbians. Statement from research, http://www.cbos.pl/SPISKOM.POL/2010/K_095_10.PDF.

labour market (see page 12), this problem still seems to be ignored by a large proportion of the population, which in itself means inferior treatment. In 2013, more than half of participants of the Polish Survey of Prejudices agreed to the statement “discrimination of women in Poland is no longer a problem”, and almost half (45.8%) said that “in recent years the government and the media have shown more concern for equal treatment of women than an actual experience of women”.

In the Polish Survey of Prejudices 2017, a representative sample of Poles responded to three questions that diagnosed their tendency to accept presence of representatives of ethnic and sexual minorities in their closest surroundings:

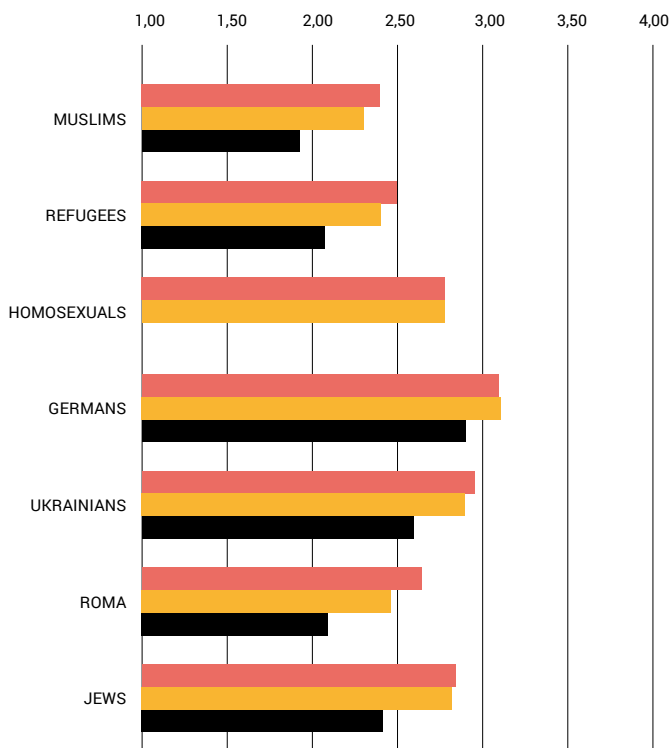
- 1.** Would you accept that [name of the group] is employed in your **workplace**;
- 2.** Would you accept [name of the group] as a **neighbour**;
- 3.** Would you accept a **marriage** of your family member with [name of the group]².

The Roma³ proved to be an unpopular ethnic minority: 35% of respondents would not want Roma to be employed in their workplace. 43% of respondents would not like to live in the vicinity of Roma people, and a vast majority (56.7%) would not accept a family member's marriage to such a person.

Poles' attitudes towards Muslims and refugees seem to be important from the perspective of the current political debate. Respondents were rather negative to the both groups. 44% of respondents would not accept refugee neighbours, a little more – 51% – would negatively refer to neighbouring to a female or male Muslim. 39% of respondents would be reluctant to employ a refugee at their workplace, 45% would react negatively to the presence of a Muslim in their workplace. 56% of respondents would oppose to the marriage with a refugee and 64% with a Muslim.

In the survey, there was some improvement in attitudes towards homosexuals compared to previous years – respondents declared generally positive attitudes toward this group. Nevertheless, almost every third respondent would not accept to employ a homosexual in his/her workplace (28%) or in the neighborhood (29%).

POLISH SURVEY OF PREJUDICES 2017: LEVEL OF ACCEPTANCE OF MINORITY GROUPS REPRESENTATIVES IN THE NEAREST SURROUNDING



Respondents answered to all the questions in scale from 1 (I would be definitely against) to 4 (I would definitely accept).

² A question no. 3 on marriage was not asked to homosexuals.

³ Respondents were asked in the survey about the Roma group; a more common name of the group – “the Gypsies” – was used.

A FEW WORDS ABOUT GOOD PRACTICES

While stereotypes and prejudices are assimilated unconsciously throughout life, it is much harder to unlearn them for good. However, studies have shown that the conversation itself with a biased person, in which s/he is asked to justify his/her negative attitudes, can have a positive effect. Similarly, in-depth contact with people who represent discriminated groups is a known method of improving attitudes towards them. This effect was observed i.a. among students who went on Erasmus scholarship to countries where they had an opportunity to get closer with Muslims. It turns out that those who have made such friendships abroad, upon return manifested a significantly lower bias against Muslims and a lesser sense of threat to the presence of Muslims in their surroundings. Another way of combating prejudices is to realise similarities between stereotyped groups and our own group (e.g. we have different origins, skin colour, religion – we are all students), which, as the research shows, also counteracts unequal treatment in a way.

An impact of the social norms – beliefs about what is appropriate and what is not – seems to be of particular importance. Prejudices towards social groups are more often expressed in communities that give them consent, that is why clear messages about disagreements to unequal treatment, both by the authorities and all members of the community are so important.





RECOMMENDED LITERATURE

The following literature will help deepen your understanding of these issues:

- Allport, G. (1954). *The nature of prejudice*. Reading, MA: Addison-Wesley.
- Bilewicz, M., Marchlewska, M., Soral, W., Winiewski, M. (2014). *Mowa nienawiści. Raport z badań sondażowych. [Hate speech. Report from the survey.]* Warszawa: Fundacja Stefana Batorego.
- Nelson, T.D. (2013). *Psychologia uprzedzeń. [Psychology of prejudice.]* Gdańsk: Gdańskie Towarzystwo Psychologiczne.
- Pietrzak, J., Mikołajczak, M. (2015). *Seksizm w Polsce. [Sexism in Poland.]* W: A. Stefaniak, M. Winiewski, M. Bilewicz (red.). *Uprzedzenia w Polsce (s. 207–233). [Prejudices in Poland (p. 207-233).]* Warszawa: Liberi Libri.
- Stefaniak, A., Witkowska, M. (2015). *Społeczne kontakty Polaków, czyli czy znamy ludzi innych niż my sami i czy chcemy ich poznawać? [Social contacts of Poles: Do we know people different from us and do we want to get to know them?]*. W: A. Stefaniak, M. Winiewski, M. Bilewicz (red.). *Uprzedzenia w Polsce (s. 99-124). [Prejudices in Poland (p. 99-124).]* Warszawa: Liberi Libri.
- Tajfel, H., Turner, J.C. (1979). *An integrative theory of intergroup conflict*. „*The Social Psychology of Intergroup Relations*”, 33(47), 74.
- Winiewski, M., Witkowska, M., Bilewicz, M. (2015). *Uprzedzenia wobec Romów w Polsce. [Prejudices against Roma in Poland.]* W: A. Stefaniak, M. Winiewski, M. Bilewicz (red.). *Uprzedzenia w Polsce. [Prejudices in Poland.]* Warszawa: Liberi Libri.

2.

LEGAL ASPECTS OF PROTECTION AGAINST DISCRIMINATION

Karolina Kędziora

The history of legal protection against discrimination in Poland is relatively short. An obligation to define in the national law the concept of “discrimination”, by defining it as the breach of duty of equal treatment, results from Poland’s accession to the structures of the European Union.

EU directives (2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of women and men in the field of employment and occupation, 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin), whose objectives Poland is obliged to implement, refer to such areas of life as higher education, vocational education and employment. Prohibition of discrimination will also be found in many obligations of the **international law**, with Poland being its party (e.g. the Convention for the Protection of Human Rights and Fundamental Freedoms⁴, the UN Convention on the Elimination of All Forms of Discrimination against Women⁵).

Labour Code⁶ and the Law on the Implementation of some European Union Regulations on Equal Treatment⁷ (hereinafter: **Law on the Implementation**) constitute the national law, which explicitly refers to the prohibition of discrimination. When analysing the phenomenon of discrimination, we refer mainly to these two acts, but not only. The publication will also include references to penal regulations, infringement provisions and regulations that oblige an institution to adapt work places and to allow studying by persons with disabilities.

At the outset, it should be emphasised that the standards of equal treatment in Poland are determined by the **Constitution of the Republic of Poland**⁸, which as an overarching act of law. Art. 32 provides that all persons are equal before the law, have the right to equal treatment by public authorities and that no one can be discriminated in political, social or economic life for any reason. The next article of the Constitution (33) sets out the principle of equality between men and women who have equal rights guaranteed in the family, political, social and economic life, and in particular an equal right to education, employment and promotion, to equal pay for work of equal value, to social security and to occupying positions, performing functions and obtaining public dignity and decorations. It should be borne in mind, however, that specific provisions, i.e. the Labour Code and the Law on the Implementation, only indicate the minimum standard to which a university is obliged both as an employer and an educational provider.

⁴ Journal of Laws of 1993, No. 61, item 284.

⁵ Journal of Laws of 1982, No. 10, item 71.

⁶ Act of 26 June 1974, Journal of Laws No. 24, item 141.

⁷ Act of 3 December 2010, Journal of Laws No. 254, item 1700.

⁸ Journal of Laws No. 78, item 483.

a.

LEGAL PROTECTION AGAINST DISCRIMINATION OF STUDENTS, INCLUDING DOCTORAL STUDIES

The Law on the Implementation of some European Union Regulations on Equal Treatment regulates the prohibition of discrimination, expressly pointing out the following areas:

- higher education,
- undertaking vocational training, including further training, improvement training, vocational retraining and apprenticeship.

REMEMBER!



When it comes to verifying whether discrimination has occurred, first it is important to identify **a legally protected feature**, on account of which there was an unequal treatment. Unequal treatment is a discrimination **ONLY WHEN** an inferior treatment of a person occurred because of e.g. his/her gender, race, ethnicity, nationality, religion/religious beliefs/general beliefs, disability, age or sexual orientation.

WHAT ARE LEGALLY PROTECTED FEATURES?

This formulation is derived from the legal doctrine. It expresses a belief that certain features of a person's identity that are acquired (e.g. religion, beliefs) or innate (such as skin colour, gender) may in a particular way expose a person to unequal treatment or discrimination. In the Polish law, under the Law on the Implementation, the legislator pointed out a closed catalogue of legally protected features, which includes:

- gender,
- race,
- ethnicity,
- nationality,
- religion/religious beliefs/general beliefs,
- disability,
- age,
- sexual orientation.

In light of the Law on the Implementation, the scope of protection in these areas is not equal, which means that:

- in the area of higher education, an unequal treatment of individuals on grounds of their **race, ethnicity or nationality** is prohibited,
- in the area of vocational training, an unequal treatment of individuals on grounds of their **gender, race, ethnicity, nationality, religion/religious beliefs/general beliefs, disability, age or sexual orientation** is prohibited.

WHAT SHOULD BE UNDERSTOOD BY A VOCATIONAL TRAINING?

It is important to properly understand this term. It is good to know that in case **we treat studying at the university as a vocational training, then the legal protection is broader**, comparing to a situation when we complain about discrimination within the framework of higher education. It is a catalogue of legally protected features, which is broader in the case of vocational training and in addition to race, ethnicity and nationality. It will also include gender, disability, age, religion/religious beliefs/general beliefs and sexual orientation. According to the Law on the Implementation, vocational training is to be understood as further education, training, retraining and professional practice. Due to the lack of the case law in national courts that would clarify this issue, remains open a question whether it is possible to summon in court e.g. gender, sexual orientation, religion/religious beliefs/general beliefs, disability or age premise as a cause of discrimination in the case when a person who accuses of discrimination receives education within the framework of higher education, but studies in a postgraduate or doctoral studies mode. It will be important to determine whether postgraduate or doctoral studies can be considered a vocational training with an objective to improve qualifications or to prepare for a change of profession, after completing the first stage of studies. There is no case law of national courts, but the judgement of the Court of Justice of the European Union (hereinafter: EU Court of Justice) leaves the door open. In *Vincent Blaizot v Université Liège and Others*⁹, the EU Court of Justice held that “any form of education which prepares to qualify for a particular occupation or employment or provides a necessary training and skills should be recognised as a vocational training under the Treaties”.

IMPORTANT!



The University of Warsaw is more broadly forbidden to discriminate against persons who study than the scope of legal protection provided for in the Law on the Implementation. According to §2 of the University of Warsaw Rector's Order No 18 of 8 March 2010 on the creation and tasks of the Rector's Committee on the Prevention of Discrimination, “The purpose of the Committee is to respect equal treatment of women and men at the University of Warsaw area and to combat all other forms of discrimination, in particular on grounds of age, race, religious beliefs, religion, disability or sexual orientation”. By the wording “in particular” it is to be understood that the

⁹ Sentence of 2 December 1988. *Vincent Blaizot v Université Liège and Others*, C-24/86, ECR 00379.

catalogue of protected features is open, which means that complaints about unequal treatment can be reported, e.g. also on grounds of ethnicity, nationality, health status.

FORMS OF DISCRIMINATION

There are five forms of discrimination:

- direct,
- indirect,
- harassment (so-called bullying, insults, abuse),
- sexual harassment,
- encouragement to discrimination.

DIRECT DISCRIMINATION



Direct discrimination occurs when a person is treated less favourably on grounds of one or more features than another person is, was or could be treated in a comparable situation.

In order to prove that direct discrimination has occurred, at least two conditions must be fulfilled: **a cause of less favourable treatment should be a feature recognised as legally protected** (e.g. gender, age, sexual orientation) and it must be possible to **compare this treatment** (less favourable) to a situation where the lack of such feature would not cause such behaviour. Therefore, a key issue will be to choose a right person to be an object of comparison, who in a similar situation would not be treated in a worse way, because s/he does not possess a feature that determines behaviour of the discriminating subject. While making comparisons, we can appeal not only to a current event, but also to past situations or future occurrences that might be predicted. A so-called **test “what if not”** will be useful, e.g. “If I was not a Roma, would I be assessed positively in the entrance exam?” or “If I was not disabled, would I be employed at the university within the framework of doctoral studies?”. An answer to these questions will let us determine whether there has been a direct or indirect discrimination in a particular case. The mechanism of direct discrimination consists in the fact that the only motive for an inferior treatment of a person is perceiving him/her by the prism of a legally protected feature(s).

A person who makes a complaint does not need to have a given feature! Discrimination also occurs when unequal treatment results from the fact that a person is associated with a person having a particular characteristic, e.g. s/he is of a different nationality than Polish. For example, a student is not allowed to take an exam in the same way as other students because the examiner has learned that his/her life partner is Egyptian (a so-called **discrimination by association**). Discrimination may also occur when a person is treated less favourably due to a wrong attribution of a given feature. For example, a student who participates in a march of equality for

the rights of LGBT people is therefore treated in an abusive manner by a Dean's office employee who saw him in a TV live coverage (a so-called **discrimination by assumption**).

► **EXAMPLE SITUATION**

A lecturer divides students into two groups according to the age criterion for a semester exam – under and above 35 years old. Then he approves the exam of “senior” students, putting a ‘very good’ grade to their exam sheets, and invites the rest of students to write a written exam, the result of which determines the grade. Students who have not passed a written exam have the right to be accused of discrimination on the grounds of age.

► **DISCUSSION OF THE SITUATION**

There has been a **direct discrimination on the grounds of age**. The allegation of discrimination may be made by any person who is included in the “younger” group, regardless of whether or not s/he has passed the examination. The examiner applied an unacceptable criterion for differentiating students situation, referring to their age. There is no rational justification for this, such as a criterion referring to the level of activity or attendance. Importantly, even if the lecturer has the right to make an exam, s/he should treat all persons equally, i.e. carry out an exam for all or cancel it for the whole group unless a reasonable criterion is referred, which does not relate to a protected feature, e.g. age in this case.

In the case students choose to go to court, they are entitled to a Civil law suit for infringement of personal rights **against the examiner**. If these were postgraduate studies, assuming that the students-to-university relationship would be considered a vocational training, then they would be entitled to a claim for compensation for discrimination on grounds of age **against university**, under the Law on the Implementation. The second solution is more favourable to a complainant because of the principle of transfer of burden of proof on the subject who is charged with discrimination (see detailed description of this principle on page 33). In practice, a student is only obliged to show probation in court that discrimination has occurred, and it is the responsibility of the institution to show evidence that there was no discrimination.

INDIRECT DISCRIMINATION



Indirect discrimination is a situation in which, on grounds of one or more protected features, a person may face unfavourable disparities or a particularly unfavourable situations as a result of a seemingly neutral resolution, criterion used or action taken. Unequal treatment will not constitute discrimination when an applied resolution, criterion or action is objectively justified on the basis of the legitimate objective to be achieved and the means to achieve it are appropriate and necessary.

In cases of indirect discrimination, the effects that a given regulation or practice has on the situation of a group of persons characterised by a feature that constitutes a criterion of discrimination should first be examined. So if a direct discrimination occurs when people in the same situation are treated differently, indirect discrimination may occur when people in different situations are treated (apparently) in the same way, but the effect of such treatment is different. These are, therefore, legal regulations but also facts (traditions, practices, unwritten rules, expressed opinions).

The specificity of indirect discrimination makes it possible to justify it, as opposed to direct discrimination. The legislator clearly states that indirect discrimination may be justified, provided that:

- the application of the resolution, criterion or existing practice aims at a lawful purpose,
- a resolution, criterion or action is objectively justified,
- measures taken are appropriate and necessary to achieve a lawful purpose.

The above list, called “three questions test”, allows us to identify whether there has been a breach. The term “lawful purpose” means **legal purpose**, which can not be related to any discrimination. A way chosen by a university to achieve a selected purpose should be **justified**. It should also be investigated whether there was an opportunity to **achieve a lawful purpose in a different way** and whether the applied measures **truly**, and not only apparently, **contribute to its achievement**. The last condition for the justification of unequal treatment refers to **proportionality** and means balancing opposed interests of the university and students. Measures applied must remain in proportion to the lawful purposes. The proportionality test may in practice apply in case of conflict between an economic interest of the university and the right of students.

► EXAMPLE SITUATION

A student with mobility disability asks departmental authorities to adjust a written exam time to his mobility by giving him an additional 60 minutes to write each exam. The answer is negative. In the justification, university refers to general provisions on examination rules, stating that if he wants to continue studies, he must adapt to requirements of all students in this faculty.

► DISCUSSION OF THE SITUATION


There has been an **indirect discrimination on the grounds of disability**. In the first place, a seemingly neutral resolution should be indicated, which in the described situation will be the same time provided for a written knowledge test for all students. Seemingly, all persons are treated in the same way. In fact, however, persons with mobility disabilities will have much less chance of writing an exam in a way that reflects actual substantive preparation than people with full mobility. When analysing the situation, it can be assumed that the goal that the university puts in determining the same duration of the exam for all students is to ensure equal opportunities to achieve a positive result by all participants. A purpose defined in such a way may be undoubtedly judged as lawful. Doubts arise when we ask ourselves whether the implemented measures truly, and not only apparently, contribute to the realisation of such purpose, since persons with mobility disabilities may have a much lower chance of achieving a positive result than their peers with full mobility. The principle of proportionality in this case will not justify operation of the university. This happens even if we assume that the university will be obliged to incur an additional cost of the examiner or exam room so that a person with disability can write an exam in a suitably extended to his/her needs time. This cost is objectively difficult to be considered as excessive and

being a rational justification for the operation of the university, in the face of student's right to equal treatment regardless of disability. Furthermore, a student may raise an allegation of discrimination before s/he takes an exam, because as the definition implies, it is a situation in which **there could** occur unfavourable disproportions in treatment as a result of a seemingly neutral resolution or criterion.

In such situation, if students choose to go to court, they are entitled to a Civil law suit for infringement of personal rights **against the examiner**. If these were postgraduate studies, assuming that the students-to-university relationship would be considered by a court a vocational training, then they are entitled to a claim for compensation for discrimination on grounds of disability **against university** under the Law on the Implementation of some EU Regulations on Equal Treatment . The second solution is more favourable to the complainant because of the principle of transfer of burden of proof on the subject who is charged with discrimination (see detailed description of this principle on page 33 of this Guidebook). In practice, a student is obliged only to the probation in court that discrimination has occurred, and it is the responsibility of the institution to show evidence that there was no discrimination, or an unequal treatment that took place had an objective justification.

ATTENTION! According to the Art. 13 sec. 1 point 9 of the Law on Higher Education, a university is obliged to create conditions for persons with disabilities to a full participation in the educational process.

HARASSMENT (SO-CALLED BULLYING, INSULTS, ABUSE)



Harassment is any unwanted behaviour whose purpose or effect is to violate dignity of a person and to create an intimidating, hostile, degrading, humiliating or derogatory atmosphere. Behaviour must relate to one or more legally protected features.

The basic condition for the occurrence of abuse is lack of consent of a person towards whom the behaviour is directed. In case a person accepts a particular behaviour, it is impossible to talk about acts that meet the definition of this form of discrimination. The definition of abuse determines that this is an "undesirable" behaviour, so a precondition for occurrence of abuse is **expression of objection** by a person to whom the action is directed. It is important that the objection is clearly expressed to the abuser, so that there is no doubt that this behaviour is unacceptable and inappropriate in the mind of an abused person. An objection may be written but also reported directly to the perpetrator of abuse, as well as to his/her supervisor or another person appointed to receive complaints. Objections expressed in a non-verbal way (e.g. gesture, crying), objectively readable for environment, should also be considered sufficient to recognise that abuse has occurred, if it does not stop the offender from further violations.

In court **there is no need to prove intention of the offender to infringe dignity of a victim**. The court analyses the purpose or effect of an undesirable behaviour. Thus, there might occur a situation when a person who takes certain actions do not think of its consequences, without realising its negative consequences until the recipient expresses protest. The definition refers to **“dignity”** by which we should understand subjective inner experience of a person, manifesting itself in self-esteem and expectation of respect from other people. Violation of dignity may involve behaviours aimed at humiliating a person or depriving him/her of equal status (discrimination), also due to his/her physical features (e.g. disability, gender, skin colour or sexual orientation).

IMPORTANT! A less favourable treatment of a person resulting from **rejection of harassment** or **subjugation to harassment** is also forbidden.

► **EXAMPLE SITUATION**

A lecturer in family law classes, discussing the institution of marriage, comments: “there are certain environments that demoralise society by encouraging legalisation of deviations”. Two students express their indignation, wincing and shaking their heads, and one of them gets up and says that as a homosexual person he feels humiliated by such a statement. There is confusion in the classroom, some students laugh, some go out. The lecturer does not react.

► **DISCUSSION OF THE SITUATION**

The situation illustrates discrimination in the form of **abuse on grounds of sexual orientation**. It is a behaviour of a lecturer who in an offensive way spoke about homosexual environment postulates demanding legalisation of the same-sex marriage. The lecturer’s comment, containing terms “demoralisation” and “legalisation of deviations”, is unambiguously a negative assessment of these claims, which goes beyond stating the legal fact, i.e. lack of possibility of marriages of single-sex couples in the light of the Polish legislation. The reaction of two students, although initially reported only in a non-verbal way (body language), was a signal of opposition clear for everybody. The statement of one of the students, who immediately announced that he is a homosexual and this statement insults him, proved to a bigger extent lack of consent and violation of dignity. The lecturer, by no reaction, de facto allowed the laughter of some people and demonstrated that he did not intend to withdraw from his position. This should be regarded as a violation of dignity of the students who object, both by himself and students who responded to the situation with laughter. It should be also added that any student who responds to a lecturer’s behaviour with objection, even if s/he does not identify him/herself as a homosexual, could raise allegations of abuse on grounds of sexual orientation in connection with a relationship with a colleague who speaks openly about belonging to a sexual minority (a so-called **discrimination by association**).

In such a case, if students decide to go to court, they are entitled to a Civil law suit for infringement of personal rights **against lecturer**, unless students request the university authorities to intervene and if they remain passive, then an appropriate claim **against university**. If these were postgraduate studies, assuming that the students-to-university relationship would be considered by a court a vocational training, then they are entitled to a claim for compensation for discrimination in the form of abuse on grounds of sexual orientation **against university** under the Law on the Implementation of some EU Regulations on Equal Treatment. The second solution is more favourable to the complainant because of the principle of transfer of the burden of proof on the subject who is charged with discrimination (see detailed description of this principle on page 34 of this Guidebook). In practice, a student is obliged only to the probation in court that discrimination has occurred, and it is the responsibility of the institution to show evidence that there was no discrimination.

SEXUAL HARASSMENT



Sexual harassment is any unwanted sexual behaviour related to sex, whose purpose or effect is to violate dignity of a person, in particular by creating an intimidating, hostile, degrading, humiliating or despicable atmosphere to him/her; such behaviours may include physical, verbal or non-verbal elements.

The definition of sexual harassment largely coincides with the previously discussed definition of harassment. It is necessary for a person experiencing sexual harassment to **explicitly object**. A person filing a complaint in court is not obliged to show purposefulness of actions of the abusive person.

Both physical and verbal and non-verbal behaviours may be examples of behaviours that can be perceived as unacceptable by their addressees and which may be considered a sexual harassment. In practice, these will include: insults and slurs, insinuations, inappropriate remarks about outfit, hairstyle, age, family situation, lewd looks, various caresses (hugging, stroking) or gestures of sexual connotation, sending dirty notes or emails that violate or may violate personal dignity of a victim, telling jokes or presenting content of an erotic nature, obscene comments, using words such as: “darling”, “honey”, “sweetheart”.

IMPORTANT! A less favourable treatment of a person resulting from **rejection of sexual harassment** or **subjugation to sexual harassment** is also forbidden.

Due to the nature of the infringement, it will not only matter whether a person expressed **objection in a way that is readable to the environment**, but also **an objective assessment of circumstances of the case**, i.e. whether subjective feelings of the party making the charge fall within scope of the “common sense”. When analysing a particular case, it should be borne in mind that sexual harassment is still a subject that is not being talked about openly, where cases of abuse are often trivialised. The situation is even worse as the abused rarely report violations. Normally, in the fear of stigmatisation and secondary victimisation, they choose to remain silent, despite the sense of injustice. The issue of sexual harassment in the public perception is still a shameful topic, characterised by a stereotypical approach. It is still very common to think about an abused woman as a person who “was provocative”, “she wanted it” or “provoked” a given behaviour. This approach, in turn, favours abuse of power and impunity of the perpetrator and puts woman in a situation of oppression, condemning her to social ostracism, shame and guilt¹⁰. However, a man experiencing sexual harassment, even though statistically it happens less often, also because of the stereotype of a “real man” in the society, for fear of “ridicule”, despite his subjective sense of dignity infringement, he will also find it difficult to express a clear opposition.

¹⁰ O. Borkowska, *Piętnować sprawców a nie ofiary, w: Niemoralne propozycje. Molestowanie seksualne w miejscu pracy. [Stigmatise the perpetrators and not victims, in: Indecent proposals. Sexual harassment in the workplace]*, Warsaw 2008, p. 37.

Therefore, particularly with regard to this form of discrimination, **preventive actions at the university are important**, although the law does not expressly impose such obligation. In a situation when an institution gives a possibility to file a complaint by **indicating specialised institutions in its structures**, it is important to encourage students to use this protection mechanism. There are institutions at the University of Warsaw whose statutory purpose is to help people experiencing unequal, discriminatory behaviour and to support them. More about institutions and procedures for reporting unequal treatment at the University of Warsaw on pages 52-59.

Signalling violation to a university is very important, even in a situation in which a person who is sexually abused decides to take legal action against the university. It will be important for court whether a victim, when reporting a violation, has given the university a chance to respond to the violation adequately to the situation, also by supporting him/her.

ATTENTION! Sexual harassment can also be a crime on the ground of the **Penal Code** (e.g. Art. 197 §1 – “Whoever violates, threatens or deceives another person into sexual relations shall be subject to the penalty of deprivation of liberty for 2 to 12 years” or Art. 199 § 1 – “Whoever by using dependence relationship or a critical position leads another person to a sexual intercourse or to undergo other sexual act or to perform such an act shall be subject to the penalty of deprivation of liberty for up to 3 years”).

► **EXAMPLE SITUATION**

A student of the 1st year appreciates accomplishments of Professor X very much, so she is very pleased to be accepted in his classes. In a short time it turns out that the professor starts to distinguish her, often asking about opinion during classes or asking for help in collecting research materials. This is a great honour for her, she tells her parents about it. After some time, she gets an email from the professor that contains pornography. It is hard to believe, but after two days arrives another one. After this incident, the student appears only once in the class. She behaves differently than usually. After the class the professor approaches her and asks if she got his messages. The girl runs out crying and never again appears at the university.

► **DISCUSSION OF THE SITUATION**

Sexual harassment has occurred. Pornographic emails that the professor has sent to his student are undoubtedly sexually abusive, and such practices should not occur, regardless of whether or not the student consents to them. That is why it is so important for the university to send a clear message to its employees what standards of relationships with students are in place and must be observed. Especially that a lecturer-student relationship is about a real power over students, which manifests itself in whether a student passes an exam. The perpetrators often state that they did not know that their behaviour was inappropriate because no one had objected before. Usually, similar situations occur with a silent acceptance of the work environment, and this is conducive to the development of pathology. The so-called innocent jokes may change over time into sexual propositions. In the described case, the student expressed a clear opposition in her behaviour (she ran out of class crying), although she did not explicitly say that she did not agree with behaviour of the lecturer.

In such a case, if the student decides to go to court, she is entitled to a Civil law suit for infringement of personal rights **against the lecturer**, and **against the university** only if the student has reported a problem, e.g. by filing a complaint that has not been resolved at all or with due diligence. If these were postgraduate studies, assuming that a student-to-uni-

versity relationship would be considered by a court a vocational training, then she is entitled to a claim for compensation for discrimination on grounds of sexual harassment **against the university** under the Law on the Implementation of some EU Regulations on Equal Treatment. The second solution is more favourable to the complainant because of the principle of transfer of the burden of proof on the subject who is charged with discrimination (see detailed description of this principle on page 33 of this Guidebook). In practice, a student is obliged only to the probation in court that discrimination has occurred, and it is the responsibility of the institution to show evidence that there was no discrimination.

ATTENTION! There is no consensus on sexual harassment at the University of Warsaw! Regardless of whether an inappropriate behaviour affects you or someone in your environment, do not wait! Respond and stand on the side of the victim, do not tolerate such behaviour! Report a violation to a specialised institution at the university! (see pages 54-56 for more information)

ENCOURAGEMENT TO THE BREACH OF DUTY OF EQUAL TREATMENT



Unequal treatment prohibited by law, in addition to direct or indirect discrimination, harassment or sexual harassment, also involves encouraging and ordering these behaviours.

A common understanding of **“encouragement”** suggests that it can consist in both a **direct communicate** (verbal or written) and a **silent acceptance**, tolerance of certain behaviours that are marked by discrimination prohibited by law. **“Ordering”** shall be understood as actions consisting in **commanding another person a behaviour** which is discrimination. This form of behaviour can occur in practice by principle, in a power relationship, e.g. in situations where one person has the power to issue instructions to another one or the ability to influence his/her behaviour. It may be, for example, a relationship lecturer-student, university authorities-students, in which the decision-making party tries to influence or subject a grade, admission to the examination, admission to the university from the declaration of discriminatory or negative behaviour towards other students (e.g. because of race, gender, nationality or ethnic origin). In practice, this can be manifested, for example, by instructing students to impede other students who belong to national minorities from joining student government structure. Importantly, a forbidden act is the act of issuing a command itself or encouraging certain behaviours, irrespective of whether the behaviour itself has occurred or not.

► EXAMPLE SITUATION

Kevin is one of the few dark-skinned university students, the only one in the group at practical classes. For some time he has noticed a disturbing behaviour of a few students who, when he appears, whisper something between themselves, laugh, ostentatiously turn their eyes or shrug shoulders when being asked by him what is the matter. During one of the classes, when no one answers a question asked by the lecturer, one of the students, pointing at Kevin, says: “Let the Bambo Brown respond,” and the room burst into laughter. The teacher also laughs.

► DISCUSSION OF THE SITUATION

A response of the lecturer, who laughs with students at the student joke, was a form of **encouragement** to this type of behaviour, which is likely to be undesirable by the addressee of the joke and thus constitutes a form of discrimination – abuse (bullying) on grounds of the skin colour. Naming a black person “Bambo Brown” directly refers to the colour of his/her skin, which has nothing to do with the context of the educational situation in which participants are present. Moreover, knowing the content of the reading for children, popular in Poland, which depicts a stereotypical perception of people with dark skin colour (“Come take a bath” – his mummy replies. But Bambo does not want his skin to turn white), the lecturer, as a representative of the university, should be aware of the seriousness of the situation and not tolerate such jokes, taking care of the studying comfort of all people, regardless of whether they belong to a majority or minority group. In addition, lecturer’s reaction can be interpreted as an incentive for further behaviour that excludes and stigmatises dark-skinned people, and confirms a student’s belief that such behaviour is appropriate and even desirable.

In such a case, if a student chooses to go to court, s/he is entitled to a claim for damages on grounds of the skin colour abuse **against the university** under the Law on the Implementation of some EU Provisions on Equal Treatment, if s/he expresses its opposition to unwanted behaviour of students and lecturers in a legible to the public way. In addition, also under the Law of Implementation, any student who has witnessed the situation will also be entitled to a claim for damages for discrimination **against the university**, in the form of encouraging Kevin’s unequal treatment, if they did not want to behave in the same way with their colleague. At the same time, Kevin has right to stand **against an offensive student** with a claim for infringement of personal rights under the Civil Code. (See pages 34-35 for more information)

ATTENTION! An abuse on grounds of colour, nationality, ethnicity or religion may also constitute a crime on the ground of the **Penal Code** (e.g. Art. 257 – “Whoever publicly insults a group of people or an individual on grounds of his national, ethnic, racial or religious affiliation or because of his/her non-denominational nature or for such reasons violates the bodily integrity of another person shall be subject to the penalty of deprivation of liberty for up to 3 years”).

PROHIBITION OF RETALIATION

Exercise of the rights conferred by a breach of the principle of equal treatment can not be the basis of unfavourable treatment and must not give rise to any adverse consequences for the person who has benefited from it.

This also applies to anyone who has given any form of support to the beneficiary of entitlement due to infringement of the principle of equal treatment.

This principle introduces the protection of persons who have chosen to use their legitimate rights to claim their rights infringed by unequal treatment, but also for those who have benefited from the inter-university protection mechanisms, e.g. they lodged a complaint with the Rector’s Committee for Preventing Discrimination at the UW. (More on pages 52-56).

CLAIMS OF STUDENTS WITH UNIVERSITY UNDER THE LAW ON THE IMPLEMENTATION OF SOME EU REGULATIONS ON EQUAL TREATMENT

The law gives an opportunity to file a claim with **compensation for discrimination against university**.

- The compensation may involve material damage (e.g. reimbursement of study expenses or studying expenses if a person had to resign because of the discrimination, such as apartment rental, costs of medical treatment related to the damage to health caused by discrimination).
- The compensation may also cover intangible damage, such as harm (e.g. reduced self-esteem, mental suffering, violation of dignity due to discrimination).
- An action must be brought to a civil court, and when charging with discrimination, the condition for which a person has been treated less favourably and the extent to which the Law on the Implementation provides for legal protection (in the area of higher education – race, ethnicity, nationality; in the vocational training – race, ethnicity, nationality, gender, age, religion/religious beliefs/general beliefs, disability, sexual orientation) shall be indicated.
- The court must always justify the amount of compensation and prove the amount of material damage if this is the case (for example, by providing documentation of medical expenses, study costs, renting a flat during the course of studies).

During the proceeding, **the burden of proof is transferred to the subject who is charged with discrimination, that is, to the institution**. This solution puts the student in a more favourable legal position. In practice, this means that a student who goes to court with a charge of discrimination against a university does not have to present proofs (e.g. witnesses, documents). An obligation of the person who makes allegation is reduced to demonstrate the PROBABILITY of DISCRIMINATION. Probability differs from proving in the following way: it is sufficient for the plaintiff party to present only a coherent version of events. If the site has evidence, a person can and should refer to it. If court finds that there has been a probability of breach of the principle of equal treatment, then the course of proceeding will be decided by a university. The institution will be required to prove that no discrimination has been committed (e.g. by actions of its employee – lecturer, administrative staff). If the institution does not prove that authorities of the university or its staff is guided by objective reasons, then the action that is the subject of the complaint will be considered discriminatory.

A period of presentation of claims for infringement of the principle of equal treatment is 3 years from the date on which the injured party received notice of breach of the principle of equal treatment but no longer than 5 years after the occurrence of the violation constituting a breach of that principle.

The pursuit of claims under this Act does not deprive of the right to pursue claims under provisions of other laws.

CLAIMS OF STUDENTS UNDER PROVISIONS OTHER THAN THE LAW ON THE IMPLEMENTATION OF SOME EU REGULATIONS ON EQUAL TREATMENT

CIVIL CODE – violation of personal rights

- Enforcement of claims for the protection of personal rights is admissible as an additional means of appeal alongside allegation of discrimination on the basis of the so-called Law on the Implementation, but also when it does not apply. For example, the Law on the Implementation does not protect against sexual harassment within higher education where there is no protection against sexual discrimination. Similarly, a person with a physical disability who has been abused by an employee of a university will not be able to rely on the Law on the Implementation. In both cases, victims will be able to apply to a civil court against direct perpetrators of the infringement with a suit for infringement of personal rights. In the case when the breach was signalled to the university which ignored it, a claim for infringement of personal rights would also be possible against the university.
- Article 23 of the Civil Code includes an **open catalogue of personal rights**, listing only, for example, health, freedom, honour, freedom of conscience, image or secret of correspondence. In the case of unequal treatment, it may appear that the right to personal dignity, honour, bodily integrity, sexual integrity and freedom of conscience may be violated. In principle, unequal treatment is associated with violation of dignity, but each case is different and due to the different criteria of discrimination it may apply to different personal rights (e.g. sexual harassment refers to bodily integrity).
- In the first place the plaintiff (a student) will have to **prove circumstances of violation or threat of violation** of the personal right in question and only then the defendant (university, lecturer, administrative staff of the university) will be obliged to prove lack of unlawfulness of the alleged activity, which according to the plaintiff is the source of violation of his/her personal rights. **Unlawfulness** in question means contradiction with legal norms and principles of social coexistence, i.e. an action on the basis of law or, for example, with the consent of an injured student, will speak in favour of the university or lecturer.

CONCLUSION In case where, for example, a person of Roma origin is discriminated against in the area of higher education, a claim on the ground of the so-called Law on the implementation is recommended, although it is possible to claim a violation of personal rights. Due to a different rule of conduct in personal rights infringement proceedings, a person who goes to court with a claim must make a much greater effort – prove circumstances of infringement or threat of infringement of his/her personal rights. In proceedings on the basis of the so-called Law on the Implementation, it is enough to merely prove a probability of discrimination by the plaintiff.

- In connection with breach of personal rights, the following can be invoked under Article 24, Article 415, Article 445 and Article 448 of the Civil Code:
 - failure to act in violation of personal rights (if unequal treatment consisted of continuous activities, e.g. dissemination of a degrading image of a person),
 - completion of activities required to remove its effects (e.g. a claim for introducing an internal anti-discrimination policy by an institution which employs employees in its activities, publication of a relevant statement – apologies for unequal treatment of a particular person on the university website),

- monetary remedies,
- payment of an appropriate amount for an indicated social purpose,
- damage compensation on general terms,
- determination of entitlement or infringement of a particular personal right (such a claim seems useful if a discriminated person is satisfied enough by recognising violation of his/her personal rights or if the victim wishes to file a property claim with a similar nature).

PENAL CODE – list of examples of forbidden acts that may occur in the field of education

PUNISHABLE THREAT – ART. 119

§ 1. Whoever applies violence or unlawful threat to a group of persons or an individual because of their national, ethnic, racial, political, religious or non-denominational status is subject to imprisonment from 3 months to 5 years.

WHEREIN:

- this is a deliberate offence committed with a direct intention (if the perpetrator intends to commit it, i.e. wants to commit a forbidden act),
- the perpetrator does not have to threaten personally – s/he can use a third person,
- the threat must be addressed to a specific person(s).

LIMITATION OF RIGHTS – ART. 194

Whoever restricts human's rights on grounds of his/her religious affiliation or non-denominational status shall be subject to a fine, restriction of liberty or deprivation of liberty for up to 2 years.

WHEREIN:

- the object of protection is freedom of conscience and religion,
- it is about all forms of restriction – until a total deprivation of rights,
- limitation may apply to social, economic and cultural rights of an individual.

RELATIONSHIP BETWEEN DEPENDENCE – ART. 199

§ 1. Whoever, by abusing dependence relationship or using a critical position, leads another person to sexual intercourse or to undergo another sexual activity or to perform such an act, shall be subject to a penalty of deprivation of liberty for up to 3 years.

WHEREIN:

- penalisation is not excluded by a victim's consent when the perpetrator leads to such a content by pressing the victim,
- dependence relationship may result from law, a contract or facts,
- this is a deliberate offence committed with a direct intention (if the perpetrator intends to commit it, i.e. wants to commit a forbidden act),

INCITEMENT TO HATE SPEECH – ART. 256

- § 1.** Whoever publicly propagates a fascist or another totalitarian state or calls for hatred against national, ethnic, racial or religious differences or for non-denominational status, is subject to a fine, penalty of restriction of liberty or deprivation of liberty for up to 2 years.

WHEREIN:

- incitement is to be understood as encouraging, inducing, inciting, agitating, revolting irrespective of the effect,
- incitement to hate speech means expressing strong aversion, anger, lack of acceptance, hostility maintaining negative attitudes,
- this is a deliberate offence committed with a direct intention (if the perpetrator intends to commit it, i.e. wants to commit a forbidden act),

PUBLIC INSULT – ART. 257

Anyone who publicly insults a group of people or individuals because of their national, ethnic, racial or religious affiliation or because of their non-denominational status or for such reasons violates the bodily integrity of another person is subject to a penalty of deprivation of liberty for up to 3 years.

WHEREIN:

- it is enough to incite to aversion and hostility, without requirement of occurrence
- of a certain effect,
- this is a deliberate offence committed with a direct intention (if the perpetrator intends to commit it, i.e. wants to commit a forbidden act),

PUNISHABLE THREAT – ART. 190

- § 1.** Whoever threatens another person to commit an offence to his/her harm or harm of the nearest person, if the threat provokes in a threatened person a legitimate fear that it will be executed, is subject to a fine, restriction of liberty or deprivation of liberty for up to 2 years.
- § 2. Pursuant takes place by request of the injured party.

WHEREIN:

- a form of the threat can be explicit or implied (word, gesture) – the perpetrator has to convey a threat in an understandable way,
- a threat can be pronounced indirectly – through third parties, if the perpetrator wants a threat to reach the addressee(s),
- there must be a legitimate concern – fulfillment of the threat seems indeed possible.

PERSISTENT HARASSMENT (SO-CALLED STALKING) – ART. 190A

- § 1.** Whoever, through persistent harassment of another person or his/her nearest person causes him/her to feel threatened, by justified circumstances, or seriously infringes his/her privacy, is subject to deprivation of liberty for up to 3 years.
- § 4. Prosecution of the offence referred to in § 1 shall be at the request of the injured party.

WHEREIN:

- harassment should be understood as intentional and long-lasting behaviour

- causing discomfort,
- persistence should be understood as perpetrator's consciousness of the nature of action s/he continually undertakes.

RAPE – ART. 197

- § 1.** Whoever by violence, unlawful threat or deceit leads another person to a sexual intercourse, is subject to a penalty of deprivation of liberty for years 2 to 12.
- § 2.** If the perpetrator, in the manner specified in § 1, leads another person to undergo another sexual activity or performs such an activity, is subject to a penalty of deprivation of liberty from 6 months to 8 years.

WHEREIN:

- sexual intercourse means any conduct leading to sexual satisfaction with the use of sex organs of the perpetrator or of the victim,
- another sexual activity is to be understood as e.g. groping, forcing to masturbation.

A penalty is affected by a social detriment of the offence, which court examines in the light of the following circumstances:

- nature and character of the infringed right,
- extent of the inflicted or threatening damage,
- manner and circumstances of the offence,
- gravity of duties infringed by the perpetrator,
- intention of the perpetrator,
- motivation of the perpetrator,
- nature of the violation of precautionary rules and the extent of their violation.

b.

LEGAL PROTECTION AGAINST DISCRIMINATION OF PERSONS EMPLOYED, INCLUDING THOSE IN CONNECTION WITH DOCTORAL STUDIES

A University is responsible for discrimination both as a party of worker's employment and non-worker's employment. It is important that:

- An employee contracted under the employment contract shall be protected by the provisions of the Labour Code,
- a person who cooperates with a university on the basis of Civil law contracts (e.g. contract for services, contract work) or self-employment is protected by the rules that have been discussed in the case of protection of learners – the Law on the Implementation of some EU Provisions on Equal Treatment (hereinafter: Law on the Implementation) (see page 33).

REMEMBER!



When it comes to verifying whether discrimination occurred, first it is important to identify a legally protected feature, on grounds of which there was an unequal treatment. Unequal treatment is a discrimination **ONLY WHEN** there was an inferior treatment of a person who makes a complaint, because of e.g. his/her gender, race, ethnicity, nationality, religion/religious beliefs/general beliefs, disability, age or sexual orientation.

WHAT ARE LEGALLY PROTECTED FEATURES?

This formulation is derived from a legal doctrine. It expresses a belief that certain characteristics of a person's identity that are acquired (e.g. religion, beliefs) or innate (such as skin colour, gender) may in a particular way expose a person to unequal treatment, i.e. discrimination.

On the ground of the **Labour Code** the legislator indicated an open catalogue of legally protected features, stating as example:

- gender,
- age,
- disability,
- race,

- religion/religious beliefs,
- nationality,
- political beliefs,
- trade union membership,
- ethnicity,
- sexual orientation,
- temporary or indefinite employment,
- full-time or part-time employment,

therefore, it will be also possible to refer to court other features, which are not explicitly mentioned in Art. 18^{3a} § 1 of the Labour Code, i.e. general beliefs, punishment, appearance, health, gender identity and others.

On the ground of the **Law on the Implementation** in relation to the non-worker's area, the legislator indicated a closed catalogue of legally protected features, where he included:

- gender,
- race,
- ethnicity,
- nationality,
- religion/religious beliefs/general beliefs,
- disability,
- age,
- sexual orientation.

IMPORTANT!



If you feel harassed, treated unfairly or violently at work and you do not identify a feature for which it is happening, analyse the definition of mobbing (Art. 943 § 2 of the Labour Code). It is also a form of pathology in employment, regulated by the Labour Code. Mobbing occurs when the following conditions are jointly met:

- there are actions or behaviour concerning an employee or directed against an employee,
- they consist in a persistent and long-lasting harassment or intimidation of an employee,
- they cause an underestimation of professional usefulness,
- they cause or have as objective humiliation or ridicule, isolation or elimination from a team of collaborators.

AREAS OF EMPLOYMENT PROTECTED AGAINST DISCRIMINATION UNDER THE LABOUR CODE:

- employment relationship (recruitment),
- termination of employment,
- employment conditions (most often the conditions of remuneration),
- promotion,
- access to trainings to improve professional qualifications.

IMPORTANT!



An applicant may already make a complaint with discrimination against a would-be employer who has refused employment due to, for example, disability, age or gender. Article 221 § 1 of the Labour Code enumerates the scope of personal data the employer may request at this stage, namely: name and surname, parents' names, date of birth, place of residence, education and current employment history. Specific information, such as marital status, sexual orientation, religion, beliefs, parenting plans, clean criminal record or even photos, may only be requested by an employer if a legal status is established (there is a special provision authorising him to do so).

FORMS OF DISCRIMINATION

Both laws – Labour Code and Law on the Implementation – indicate analogically five forms of discrimination prohibited by law:

- direct,
- indirect,
- harassment (so-called bullying, insults, abuse),
- sexual harassment,
- encouragement to discrimination.

DIRECT DISCRIMINATION



occurs when in a comparable situation an employed person is treated worse than another person who has an employment contract or other form of employment.

When analysing whether this form of discrimination has taken place, e.g. a person with disability should be compared to an employee who does not have this legally protected feature and, in a comparable situation, is not adversely affected when, for example, identifying workers for promotion. But if there is not any university's employee at the moment with whom to compare, then it is possible to appeal to the past by comparing, for example, with a person who previously occupied the same position. If this were also not possible, creation of a hypothetical model would be left, i.e. making a thesis that with high probability if there were such a person (with disability) in a comparable situation, s/he would not be treated worse.

A helpful way of establishing whether there is a legitimate suspicion of direct discrimination is **carrying out a test "what if not ..."**. We have to ask ourselves, for example: Would I be fired if I were not a homosexual? Would I earn more if the employer did not know I was a Jehovah's Witness?

Sentence of the Supreme Court of 4 October 2007, ref. I PK 24/07

"Appointment of an employee by the employer (a person for whom the employer is responsible) of particularly burdensome obligations due to personal attributes, unrelated to the work performed, is the breach of the principle of non-discrimination set out in Art. 18^{3a} § 2 of the Labour Code".

Sentence of the Supreme Court of 07 November 2016, ref. III PK 11/16

"A citizen of Ukraine employed as a foreign language teacher in a public school should be treated in the scope of the contract concluded in the same way as a Polish citizen, otherwise she may be discriminated against because of the lack of Polish citizenship. The SC considered that admissibility of concluding fixed-term contracts should depend only on the need resulting from organisation of teaching or replacement of an absent teacher. Provisions of the Labour Code, among prohibited discriminatory criteria, mention i.a. nationality. A criterion of citizenship is not mentioned in this catalogue. The SC stressed that concepts of nationality and citizenship are not identical. On the other hand, given that provisions of the Labour Code contain an open catalogue of discriminatory criteria, citizenship can not, in the circumstances of the case, justify the differentiation of worker's situation".

Sentence of the District Court for Warszawa-Śródmieście in Warsaw of 9 July 2014, ref. VI C 402/13

"Discrimination can take on this particular form in which it is irrelevant whether or not a person has a feature on grounds of which s/he is being distinguished in a certain group. Discrimination also involves attribution of a particular feature to a person and for the very presence of the phenomenon of discrimination, possession of the feature does not matter. This phenomenon is called discrimination by association, that is, joining of a person – due to subjective views – to a group of discriminated people".

INDIRECT DISCRIMINATION



means a situation in which, due to an effect of a seemingly neutral resolution, criterion or action taken, there are, or would be, unfavourable disparities or particularly disadvantageous situations for all or a significant number of employed persons belonging to a group distinguished for one or more legally protected features. Unequal treatment is not discriminatory if a resolution, criterion or action applied is objectively justified on the basis of a lawful purpose to be attained and the means to achieve it are appropriate and necessary.

On the basis of the Labour Code on indirect discrimination we can speak in regard of the establishment and termination of employment, conditions of employment, promotion and access to training to improve professional qualifications.

Resolution of the Supreme Court of 21 January 2009 II PZP 13/2008

“Termination of the contract of employment with an employee – a woman – only because she reached retirement age and acquired pension rights, if the retirement age is lower for women than for men, is an indirect discrimination on grounds of gender” (Art. 113 of the Labour Code). This behaviour of the employer constitutes discrimination against an employee and creates employer’s liability based on Art. 45 § 1 of the Labour Code (in the form of restoring an employee to work or awarding him/her compensation for unlawful termination of a contract of employment with notice) and Art. 183d of the Labour Code (in the form of compensation for damage caused by violation of the principle of equal treatment in employment). In the case law of the Supreme Court, a premise of selection of an employee for dismissal is possible because of his/her reaching retirement age and the acquisition of pension rights, but only if there is a need to reduce employment for reasons related to the employer”.

HARASSMENT



(so-called bullying, insults, abuse) is an unwanted behaviour whose purpose or effect is to violate dignity of an employee and to create an intimidating, hostile, degrading, humiliating or derogatory atmosphere. What is important, harassment as a form of discrimination must relate to at least one legally protected feature.

► EXAMPLES OF HARASSMENT

- A boss jokes with religiousness of his subordinate, not responding to her comments that she does not want it.
- Comments of co-workers about a young age of a new person in the team, unrelated to his/her job, when the person lodges a complaint to the management.

Sentence of the Wrocław Court of Appeal of 31 January 2017 III Apa 33/16

"In the case referred to in the Art. 183a Section §5 (2) of the Labour Code on discrimination in the form of abuse, there is no obligation to create a comparative model or to prove intention to violate dignity and to create a hostile atmosphere. The "goal or effect" of this action is analysed in the objective sense. Subjective perceptions of an employee that his personal dignity has been breached have no legal significance until they are supported by an objective confirmation. Facts presented by an employee are to prove probability of discrimination, which creates a favourable situation for an employee in a way that probability is not subject to strict rules of proving, but must maintain a credibility factor in the light of rules of logic and life experience".

SEXUAL HARASSMENT



is discrimination on grounds of gender, which is manifested by an undesirable sexual or gender-related behaviour of a person, and the purpose or effect of which is to violate dignity or humiliate or debase an employee. Such behaviour may include physical, verbal or non-verbal elements.

In order to sexual harassment or harassment occur, a person's lack of agreement is necessary, i.e. person's objection to abusive behaviours expressed explicitly or implicitly, but objectively legible to environment.

► FORMS OF SEXUAL HARASSMENT:

- sexual blackmail, such as making current employment conditions or improving them dependant on performing certain sexual acts;
- creating unfriendly working conditions, e.g.
 - insults, remarks, jokes, insinuations with erotic subtext,
 - inappropriate comments on outfit, appearance, age, marital status,
 - use of sexual associations,
 - indecent comments, gestures and looks,
 - sexual touching (hugging, patting, groping, pinching),
 - placing in the common space calendars, posters, photographs, etc. depicting female/male acts,
 - sending letters and emails containing erotic connotations.

ENCOURAGEMENT TO THE BREACH OF OBLIGATION OF EQUAL TREATMENT



Discrimination is also an act of encouraging or ordering an employee or student to discriminate against a person employed on grounds of his/her legally protected feature, such as nationality or sexual orientation. A person who was encouraged to breach an obligation of equal treatment or who was ordered to do so may file a suit to the court.

ATTENTION! As a rule, refusing to perform a supervisor's order may have an adverse effect on an employee, ranging from a sanctioning fine to the termination of the contract of employment or an immediate dismissal. Nevertheless, an employee is not obliged to absolutely and blindly obey his/her employer. S/he can not uncritically approach the instructions given by the employer, especially if they are unlawful. In such situations s/he not only has the right to, but also an **obligation to refuse to perform an unlawful order**. Such unconditional performance of each of the instructions of employer by an employee can even justify the dismissal.

OBLIGATION TO EQUAL PAY

Provisions of the Labour Code provide for equal pay for equal work or work of equal value. According to the Art. 183c, remuneration includes all components of remuneration, regardless of their name and nature, as well as other work-related benefits granted to employees in cash or in a form other than cash.

Works of equal value are those whose performance requires from workers comparable:

- professional qualifications (confirmed by documents provided for in separate regulations or practice),
- professional experience,
- responsibility (e.g. regarding a number of people managed by an employee),
- effort (can be both mental and physical).

What about awards?

The employer has an opportunity to distinguish a particularly engaged or productive employee by awarding a recognition bonus or award, which does not imply a complete freedom to award such benefits. The differentiation criteria, as well as in the case of remuneration, should also be clear to employees.

Sentence of the Supreme Court of 22 February 2007 I PK 242/2006

“Resolution of the Labour court replacing provisions of the contract of employment with appropriate non-discriminatory provisions may concern a future development of the substance of ongoing employment relationship. In the event of breach of the principle of equal treatment in employment in terms of payment in the past (especially after termination of employment), an employee may claim compensation equal to the difference between the remuneration s/he should receive without breach of the principle of equal treatment and remuneration actually received (Art. 183d of the Labour Code) . In the case of differentiation of remuneration of employees performing the same work, an employer should prove that he was guided by objective reasons. If an employer refers to different professional qualifications and length of service, it means he needs to demonstrate that they were important in the performance of tasks entrusted to employees”.

OBLIGATION OF RATIONAL IMPROVEMENT FOR PEOPLE WITH DISABILITIES

Sentence of the Supreme Court of 12 November 2014, ref. I PK 74/14

The SC provided in its justification the findings of the EU Court of Justice (Navas C-13/05), which held that prohibition of discrimination on grounds of disability in termination of employment contract precludes termination of contract on grounds of disability, which, given an obligation to introduce rational improvements, is not justified by the fact that a person is not competent or capable or not at his/her disposal to perform the most important tasks on a given position. The Court recalled that the above principle of European law was introduced into the Polish law by **Art. 23a of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities (Journal of Laws of 2011, No. 127, item 721)**. On the basis of this, an employer is obliged to provide necessary rational improvements to a person with disabilities remaining in a work relationship with him/her, who is involved in the recruitment or training process, internship, vocational training, apprenticeship or graduate internship. The SC in the present case decided that the employer could refrain from the obligation in question only if the need for improvements (both material and organisational) for a person/persons with disabilities would not constitute a disproportionately high burden for the employer. The court is to assess these circumstances and the whole of the circumstances of the case (e.g. whether the employer was able to obtain financial support from the state, if necessary) must be taken into account.

► EXAMPLE

Preparation of the schedule with students taking into account mobility limitations of the lecturer who, due to his/her disability, has difficulty accessing lecture rooms located on the sto-

rey of the university building, where there is no direct access by the lift (to get there, we have to climb additional stairs). Such an action of the university is an excellent example of the cost-effective application of rational improvements, with solutions concerning organisation of work of employees, taking into account needs of the lecturer. It is therefore **important for employees to notify their employers of their specific needs related to their disability.**

PROHIBITION OF RETALIATION

The Labour Code, similarly to the Law on the Implementation, provides protection against the so-called retaliatory actions. The exercise of the rights conferred by a breach of the principle of equal treatment can not be the basis of unfavourable treatment and must not give rise to any adverse consequences for a person who has benefited from it. This protection also applies to anyone who has given any form of support to a beneficiary of entitlement due to infringement of the principle of equal treatment.

► EXAMPLE

A Hindu Indian woman who teaches at the university is being repeatedly overlooked when it comes to designating teachers to conduct extra classes with students (with extra pay). A colleague reports to the employer a fact of potential discrimination, justifying that a probable cause of her friend's inferior treatment is her nationality. Both a discriminated person and a person supporting her by reporting discrimination are protected. They cannot face any negative consequence of the complaint (e.g. limiting access to promotion or termination of employment).

EXCEPTIONS TO OBLIGATION OF EQUAL TREATMENT

In Art. 18^{3b} in § 2-4 of the Labour Code there were specified exceptions to the obligation of equal treatment in employment, i.e. situations where employer's actions differentiating situation of employees are not prohibited by law discrimination.

Particular attention should be paid to the so-called **compensatory measures** taken for a specified period of time, aiming at equalising chances of all or a significant number of employees distinguished for one or more legally protected features by reducing an actual inequality. An example may be a preference of representatives of the Roma minority or people with disabilities when recruiting for work at the university. This decision should be documented by data on the low percentage of people belonging to this minority and contain an explanation why, from a university perspective, such actions are justified and desirable. This is possible, of course, provided that a final choice is made by the employer between the candidates with comparable qualifications needed to perform an offered job. Actions of this type can be taken also for the students studying at the university. It should be kept in mind that actions taken should be regularly evaluated so that they can be justified at any time. The Law on the Implementation contains an analogous provision on non-worker's employment (employment under the Civil Code).

► EXAMPLE

At the University of Warsaw, on the basis of Regulation No. 39 of the Rector of the University of Warsaw dated 28 August 2013, a company crèche was established. According to § 2 of the Regulation, the aim of the university is to develop conditions conducive to effective and flexible merging of professional and family responsibilities of employees and doctoral students of the University of Warsaw, dissemination of these solutions among people raising children under the age of 3 and equal compensation of their professional and parental

opportunities through the organisation of nursing, educative and didactic activities for their children. Admission of a baby up to 3 years of age to a crèche can be sought if at least one of the parents of the child is professionally inactive.

The legislator allows unequal treatment also in the situation of non-employment of an employee for one or more reasons relating to e.g. gender, religion, nationality, age, if nature of work or conditions of its conduct result in the cause being **a real and decisive professional requirement** to an employee.

Restriction of churches and other religious associations, as well as organisations whose ethics are based on religion, denomination or beliefs, to the access to employment, does not violate the principle of equal treatment. In such a case, access to employment may be restricted in respect of religion, denomination or beliefs, if the nature or character of activities performed by indicated entities is such that religion, denomination or beliefs are true and decisive professional requirement for an employee, proportionate to the attainment of the lawfulness purpose to differentiate a situation of this person. This also applies to the requirement of employees to act in good faith and loyalty to ethics of the Church, another religious association or organisation whose ethics is based on religion, denomination or beliefs.

An application of measures that differentiate legal situation of an employee due to **protection of parenthood and disability** will also be an exception to the requirement of equal treatment in employment. This also applies to a different treatment of employees on grounds of age by applying **seniority criterion** when determining terms of employment and dismissal of employees, remuneration and promotion rules and access to training to improve professional qualifications.

CLAIMS OF PERSONS EMPLOYED AT THE UNIVERSITY UNDER THE LABOUR CODE AND THE LAW ON THE IMPLEMENTATION OF SOME EU PROVISIONS ON EQUAL TREATMENT

There is a possibility to file a claim with **compensation for discrimination against the university**.

- This compensation may be related to the material damage (e.g. lost earnings, difference in remuneration due to the need to start a new, less paid job or lower remuneration on grounds of e.g. gender).
- This compensation may also apply to a non-material damage – harm (e.g. reduced self-esteem, mental suffering, violation of dignity due to discrimination).

Sentence of the Supreme Court of 7 January 2009 III PK 43/2008

“If employees admitted to the training had comparable qualifications and seniority to a trade unionist whose participation was refused and no objective circumstances precluding discrimination occurred, an employee shall be entitled to compensation for discrimination of not less than a minimum remuneration for work. Although this provision speaks of compensation, the case law of the Supreme Court expresses a view that it includes both the equalisation of damage in property and non-property. The employer is therefore obliged to pay compensation (that is to cover loss suffered by an employee), as well as to pay compensation for the employee’s injury”.

- Under the Labour Code we can claim compensation of not less than a minimum wage for work determined on the basis of separate regulations. The Law on the Implementation does not give a lower limit of compensation. Both laws do not specify an upper limit

of possible compensation. If the claimant refers to a material damage, s/he will have to prove to the court that the amount of compensation claimed is justified (e.g. by providing documentation of medical expenses, re-training costs, lower earnings in the new job).

- We should bring an action to a Civil court if the Law on the Implementation was violated, and to a Labour court in the case of violation of the Labour Code. When filing a charge of discrimination, it is important to indicate the nature of the offence under which the legislation provides for legal protection (closed catalogue under the Law on the Implementation, open catalogue under the Labour Code) (pages 38-39).

During the proceeding, **the burden of proof is transferred to the subject who is charged with discrimination, e.g. to the institution.** This solution puts a discriminated person in a more favourable legal position. In practice, this means that a claimant who goes to court with a charge of discrimination against a university does not have to present proofs (e.g. witnesses, documents). Of course s/he can and should, if s/he has an opportunity. An obligation of the person who makes allegation is reduced to demonstrate a PROBABILITY of DISCRIMINATION. Probability differs from proving in a way that it is sufficient for the plaintiff party to present only a coherent version of events. Then, if the court finds that there has been a probability of a breach of the principle of equal treatment, then the course of proceeding will be decided by a university. The institution will be required to prove that no discrimination has been committed. If the institution does not prove that its authorities or its employees were guided by objective reasons in their actions, an action that is the subject of the complaint may be considered as discriminatory.

Time limits for a law action due to a breach of the principle of equal treatment on the basis of the Law on the Implementation is 3 years from the date on which an injured party received notice of a breach of the principle of equal treatment but no longer than 5 years after the occurrence of the violation constituting a breach of that principle. Pursuant to the Labour Code, a claim from an employment relationship is time-barred by expiration of a period of 3 years from the date on which the claim became due.

Sentence of the Supreme Court of 03 February 2009, ref. I PK 156/08

“Limitation period for the claim originating from Art. 18^{3d} of the Labour Code can not start before the disclosure of personal injury, which may occur after the termination of employment”.

CLAIMS OF PERSONS EMPLOYED UNDER PROVISIONS OTHER THAN THE LABOUR CODE AND THE LAW ON THE IMPLEMENTATION OF SOME EU PROVISIONS ON EQUAL TREATMENT

See the discussion “Claims of students under provisions other than the Law on the Implementation of some EU Provisions on Equal Treatment” (pages 34-37). In addition, we shall indicate Art. 218 § 1a of the Criminal Code, which provides for the protection of all employees’ rights: “Whoever who carries out activities in the field of the Labour Code and social security maliciously or persistently violates employees’ rights resulting from employment relationship or social security, is subject to a fine, restriction of liberty or deprivation of liberty for up to 2 years”.



3.

INSTITUTIONAL PROTECTION AGAINST DISCRIMINATION

Julia Berg

Counteracting discrimination is a very important aspect in the development of democratic societies that are based on values such as right to freedom, diversity and equality. Occurring in all spheres of life manifestations of unequal treatment, discrimination on grounds of any features, abuse, humiliating and derogatory treatment must meet an immediate response of both public institutions and individuals, who should know how to respond in such cases and where to ask for help.

Anti-discrimination activities are carried out at various levels, both by state institutions and non-governmental organisations, which, while noting still heavily rooted prejudices based on prejudices, stereotypes and discriminating behaviour towards some social groups, wish to surround victims of discrimination with comprehensive legal aid and psychological support.

Education of the society is extremely important in the context of counteracting discrimination, which not only influences development of attitudes of non-tolerance for unequal treatment and prejudices, but also contributes to actively combating discrimination against those who are particularly vulnerable to it.

a.

INSTITUTIONAL PROTECTION AGAINST DISCRIMINATION AT THE UNIVERSITY OF WARSAW

University of Warsaw is a place where manifestations of humiliating, unequal treatment are not tolerated, and the academic community should express its unequivocal and firm objection to them. Any person belonging to the academic community who has experienced violence, discrimination, unequal treatment or witnessed discriminatory conduct should immediately report this to an appropriate institution, but also react directly to it. Only direct reaction, opposition to behaviours degrading human dignity may result in a more effective fight against discrimination, and this attitude will always be supported by university authorities – not only within the University but also outside.

The following pages contain a list of specialised institutions at the University of Warsaw to support those who have encountered discrimination issues at the university.

RECTOR'S COMMITTEE FOR PREVENTING DISCRIMINATION

CONTACT

Anna Grędzińska
Chief Equality
Specialist at UW
Phone: 22 55 27 185
antydiskryminacja@uw.edu.pl

The committee was established in 2010 on the basis of the order of Rector of the University of Warsaw. Its purpose is to prevent discrimination on grounds of any legally protected feature and to respect the principle of equal treatment within the university. It consists of UW academic staff distinguished by knowledge and experience in the field of counteracting discrimination.

The committee monitors observance of the principle of equal treatment at the University of Warsaw, develops possible solutions to problems arising from the violation of prohibition of discrimination and offers help to persons who suffered unequal treatment on grounds of any feature.

All members of the academic community who have been discriminated against, e.g. on grounds of gender, nationality, religion, sexual orientation, disability, etc., may refer the matter to the Committee with a purpose of receiving substantive advice or undertaking specific actions to a person who allows him/herself for a discriminatory behaviour.

This is why it is also a responsibility of the Committee to initiate investigations and apply for disciplinary action against persons committing discrimination. Discrimination cases can be reported directly to the members of the Committee or to the Equal Opportunity Chief Specialist at the UW. Full anonymity is guaranteed.

Members of the Committee for the period 2016-2020

dr hab. Michał Bilewicz, prof. UW

Faculty of Psychology, michal.bilewicz@psych.uw.edu.pl

dr hab. Bożenna Chołuj, prof. UW

Faculty of Modern Languages, b.choluj@uw.edu.pl

prof. dr hab. Małgorzata Fuszara

Faculty of Applied Social Sciences and Resocialisation, mfuszara@op.pl

prof. dr hab. Zbigniew Lasocik

Faculty of Applied Social Sciences and Resocialisation, zlasocik@uw.edu.pl

dr Hanna Machińska

Faculty of Law and Administration, h.machinska@wpia.uw.edu.pl

dr hab. Ryszard Szarfenberg, prof. UW

Faculty of Political Science and International Studies, r.szarfenberg@uw.edu.pl

dr hab. Magdalena Środa, prof. UW

Faculty of Philosophy and Sociology, msroda@gmail.com

EQUAL OPPORTUNITY CHIEF SPECIALIST AT THE UNIVERSITY OF WARSAW

The position was created in 2016. A person who performs this function is engaged in anti-discrimination policy, equal treatment and diversity at the University of Warsaw. The main task of the Equal Opportunity Chief Specialist is to take steps to fully respect and implement the principle of equal treatment and to prevent discrimination on grounds of any feature. His/her tasks include promotion and dissemination of equal treatment issues, anti-discrimination standards and implementation of equality solutions. Chief Specialist also carries out equality actions specified in the HR Excellence in Research Strategy.

Chief Specialist cooperates with the Rector's Committee for Preventing Discrimination. Anyone who has experienced discrimination or unequal treatment may report the incident directly to the members of the Committee or to the Chief Equality Specialist who will then forward the case to the Committee.

CONTACT

Anna Grędzińska
Equal Opportunity Chief
Specialist at the UW
Phone: 22 55 27 185
am.gredzinska@uw.edu.pl
antydiskryminacja@uw.edu.pl

UNIVERSITY OF WARSAW LAW CLINIC – STUDENT LEGAL AID CENTRE

CONTACT

University of Warsaw Law
Clinic
Collegium Iuridicum I, room 102
Krakowskie Przedmieście
26/28
Phone/fax: 22 55 24 318
Phone: 22 55 20 811
klinika@wpia.uw.edu.pl

Section on Counteracting
Discrimination
Phone: 22 55 24 318
Monday – Friday
8:00–15:00
Krakowskie Przedmieście 26/28
Collegium Iuridicum I,
Faculty of Law and Administra-
tion, ground floor, room 105

It is an institution that provides free legal advice on a range of areas of law (e.g. labour law, civil law, criminal law, medical law, etc.), including assistance to victims of violence and discrimination. Help in the Clinic is provided by students who, under the guidance of a lecturer, deal with cases of violence, unequal treatment and discrimination, also occurring at the University of Warsaw.

Anyone who has experienced unequal and discriminatory treatment has the right to refer to the Clinic for support in relation to the breach of principle of unequal treatment. Meetings with the Clinic staff can be arranged by anyone who, because of difficult financial situation, can not afford professional legal assistance. We can make an appointment by telephone and email with persons on duty who provide legal aid within the Clinic. During the on-call duty employees hear the case and take decisions on a possible action and legal assistance.

ACADEMIC OMBUDSMAN

CONTACT

Academic Ombudsman
Anna Cybulko
University Library in Warsaw,
Dobra 56/66, mezzanine,
room 160C
Phone: 22 55 27 214
ombudsman@uw.edu.pl

Office hours:
Monday – Thursday
8:30-15 30.
Hours of on-call duty:
Monday, Thursday
11:00-14:00.

www.ombudsman.uw.edu.pl

It is a person to whom students and UW employees can make informal and confidential inquiries to help with matters related to the university and its community. The task of the Ombudsman is to support employees and students in the conflict resolution and to ensure that all members of the academic community are treated fairly and righteously.

The Ombudsman, along with the support from the Centre for Disputes and Conflict Resolution, deals with resolving conflict situations in the academic environment primarily through mediation, as well as by contacting relevant institutions, which, in accordance with their statutory objectives, provide assistance in this regard. The ombudsman also acts to counteract discrimination and unethical behaviour and to help solve problems that may arise from this. Any person who has experienced a degrading or unequal treatment or has noticed cases of discrimination in the academic environment may resort to the Academic Ombudsman. The Ombudsman will take action whenever a person experiencing discrimination in any form notifies the problem, both by providing information about his/her rights and by taking a broad range of measures to address the situation.

The Ombudsman can be addressed with any mobbing and

discrimination issue, which will be dealt with confidentiality (in regard to both information provided to the Ombudsman and identity of the person making the report), independence, neutrality and impartiality. The Academic Ombudsman accepts reports in person, as well as by e-mail or telephone, and the Ombudsman's intervention in a particular case follows after the Ombudsman's personal meeting and the written consent of the notifier.

UW OFFICE FOR PERSONS WITH DISABILITIES

The aim of this institution is to help people with disabilities, both students in the pursuit of their studies and employees of the university. Office for Persons with Disabilities can be addressed by anyone who, due to his/her disability, experiences inferior treatment or faces barriers in the course of studying or undertaking other important activities necessary for the proper functioning at the University.

Employees of the Office organise free psychological consultations, trainings in the use of technological equipment, but also provide assistance in cases where people with disabilities experience abuse of their rights or inferior treatment for reasons independent of them. The main task of the Office is to reduce barriers faced by people with disabilities, as well as to fully integrate them into the academic community and to treat them as fully-fledged members.

The Office for Persons with Disabilities will act for those who register by filling in a questionnaire available on the website www.bon.uw.edu.pl, then sign up to the consultant by phone or e-mail, and will present their health situation.

CONTACT

UW Office
for Persons with Disabilities
Krakowskie Przedmieście
26/28, 00-927 Warsaw
Phone: 22 55 24 222
Fax: 22 55 20 224
e-mail: bon@uw.edu.pl

Hours of on-call duty:
Monday, Wednesday, Friday
9:00–13:00
Tuesday and Thursday
12:00–16:00

CENTRE FOR DISPUTES AND CONFLICTS RESOLUTION AT THE FACULTY OF LAW AND ADMINISTRATION UW

It is an organisation whose statutory purpose is to promote amicable conflict resolution. Anyone who has experienced discrimination, violence or unequal treatment or who has been affected by specific behaviour, speech or has been harassed and bullied in any way and who seeks help and out-of-court settlement may resort to the Centre. One of the aims pursued and disseminated by the Centre is to strengthen the sense

CONTACT

Centre for Disputes
and Conflicts Resolution

Lipowa 4,
Collegium Iuridicum II,
room 3.5

Phone: 22 552 59 23
mediacje@uw.edu.pl

Hours of on-call duty:
Monday, Wednesday, Friday
9:00–13:00

of respect for human rights, tolerance and acceptance and to promote modern ways of resolving conflicts.

If you contact the Centre for Disputes and Conflicts Resolution (by phone or e-mail), a mediator and place and time of the proceedings will be determined after a preliminary examination of the case and a consent to mediation by the other party. At the request of the person reporting the problem, in justified cases, mediation may also be conducted at the distance, without the need for direct confrontation between the parties.

ACADEMIC LEGAL COUNSELLING**CONTACT**

Academic Legal
Counselling at the University
of Warsaw
Krakowskie Przedmieście 24,
room 109
Phone: 22 826 49 99
biuro@akademickaporad-
niaprawna.pl

Duty hours are available
up-to-date on the website.

It is an institution providing free legal aid to students. Any student who has experienced unequal treatment, has become a victim of abuse or his/her rights have been violated in any other way, may resort to the Academic Legal Counselling for professional advice. A condition for applying to the Counselling is the possession of a valid student ID or another document confirming the status of the student, but a prior appointment to a specific date is not needed. Individuals who provide counselling in the unit are generally students of the last years, graduates and PhD students of the Faculty of Law and Administration of the University of Warsaw, who work with support of advisers experienced in a particular field. A basic principle of the Academic Legal Counselling is confidentiality and willingness to provide free legal assistance to all persons with a student's status.

b.

INSTITUTIONAL PROTECTION AGAINST DISCRIMINATION AT THE NATIONAL LEVEL

Relevant powers in the area of counteracting discrimination and unequal treatment are also vested in specialised national units at the national level.

POLISH OMBUDSMAN

It is a state institution whose purpose is to safeguard human rights and non-violation of the principle of equal treatment by public authorities. One of the main tasks of the PO is to provide assistance to people who are discriminated against and excluded. The Ombudsman, together with the PO Office – an auxiliary unit of the body – conducts cases concerning implementation of the principle of equal treatment and non-discrimination on the grounds of any cause. The Equal Treatment Team, set up within the Office, is responsible for promoting tolerance and respect for each human, and also for helping people experiencing unequal treatment.

Any person who believes that his/her constitutional right to equality has been infringed by the State may notify the Polish Ombudsman. The notification to the PO can be submitted in writing, electronically (via a form available at www.rpo.gov.pl), and in person (in Warsaw and in Offices of Plenipotentiaries). Name, correspondence address and details of the case should be provided in the application. In addition, a notifier may reserve his/her personal information only to the PO use.

The PO, acting in accordance with its statutory competences, i.a. examining situations that have been reported by victims of discrimination, has the right to ask for a case to be examined by another body, may request an appropriate institution to stop infringement, and may also initiate proceedings in the case or indicate appropriate measures to a notifying person.

The Ombudsman is in charge of observing rights of every citizen (but also a foreigner if s/he is under authority of the

CONTACT

Office of the Citizens' Rights
Ombudsman
Solidarności 77
00-090 Warsaw

Phone: 22 55 17 700
biurorzecznika@brpo.gov.pl

Citizens' helpline
Phone: 800 676 676
available:
Monday
10:00–18:00
Tuesday to Friday
8:00–16:00

Republic of Poland) in respect of equal treatment on grounds of gender, disability, nationality, age, religion or any other feature. An application submitted to the PO is free of charge and is not subject to any formal requirements..

GOVERNMENT PLENIPOTENTIARY FOR CIVIL SOCIETY AND EQUAL TREATMENT

CONTACT

Chancellery of the President
of the Council of Ministers

Government Plenipotentiary
for Civil Society Affairs

Government Plenipotentiary
for Equal Treatment
Affairs
Ujazdowskie 1/3
00-583 Warsaw
Phone: 22 694 75 78
Fax: 22 694 73 93

It is a body acting within the Chancellery of the Prime Minister. Main tasks of the Plenipotentiary are to monitor observance of the principle of equal treatment, to counteract discrimination and to take all measures aimed at eliminating intolerance and violation of right to equality, freedom and human dignity.

Any person who believes that s/he has become a victim of discrimination on grounds of any feature or has experienced a degrading, humiliating or offensive conduct may resort to the Plenipotentiary. For this purpose contact the Government Plenipotentiary Office for Equal Treatment by telephone or by post – correspondence should include name and address of the person lodging a complaint or request.

C.

LIST OF SELECTED NON-GOVERNMENTAL ORGANISATIONS ACTING IN THE AREA OF COUNTERACTING DISCRIMINATION

POLISH SOCIETY OF ANTI-DISCRIMINATION LAW

Szpitalna 5 lok. 6a, staircase II
00-031 Warsaw
Phone: 22 498 15 26
maszprawo@ptpa.org.pl

HELSINKI FOUNDATION FOR HUMAN RIGHTS

Zgoda 11
00-018 Warsaw
Phone: 22 556 44 40
Fax: 22 556 44 50
hfhr@hfhrpol.waw.pl

ASSOCIATION FOR LEGAL INTERVENTION

Siedmiogrodzka 5/51
01-204 Warsaw
Phone: 22 621 51 65
biuro@interwencjaprawna.pl

WOMEN'S RIGHT CENTRE

Wilcza 60 lok. 19
00-679 Warsaw
Phone: 22 622 25 17
sekretariat@cpk.org.pl

CAMPAIGN AGAINST HOMOPHOBIA

Solec 30A
00-403 Warsaw
Phone: 22 423 64 38
info@kph.org.pl

FEDERATION FOR WOMEN AND FAMILY PLANNING

Nowolipie 13/15
00-150 Warsaw
Phone: 22 635 93 95
federacja@federa.org.pl

POLISH FORUM OF PEOPLE WITH DISABILITIES

Bitwy Warszawskiej 1920 r. 10
02-366 Warsaw
Phone: 22 654 19 28
biuro@pfon.org

FOUNDATION FOR SOCIAL DIVERSITY (FRS)

Post office box 381
00-950 Warsaw 1
Phone: +48 (0) 574 682 244
biuro@ffrs.org.pl

ASSOCIATION AGAINST ANTI-SEMITISM AND XENOPHOBIA "OPEN REPUBLIC"

Krakowskie Przedmieście 16/18
00-325 Warsaw
Phone: 22 828 11 21
otwarta@otwarta.org

AUTHORS' BIO

JULIA BERG – PhD student at the Faculty of Law and Administration at the University of Warsaw, Institute of Criminal Law. She is involved in anti-discrimination issues, with particular emphasis on women's perspective and gender-based discrimination, as well as broader issues of human rights protection.

KAROLINA KĘDZIORA – legal adviser, President of the Polish Society of Anti-discrimination Law. Certified anti-discrimination trainer and trainer of the Human Rights Education for Legal Professionals Programme of the Council of Europe. I.a., co-author of publications *Dyskryminacja i mobbing w zatrudnieniu* (2010) [*Discrimination and Mobbing in Employment (2010)*] and *Komentarza do Ustawy o wdrożeniu niektórych przepisów UE w zakresie równego traktowania* (2016). [*Commentary on the Law on the Implementation of some EU Regulations on Equal Treatment (2016)*] Nominated for the Forbes Professional Awards 2013. Since 2016, a member of the Human Rights Commission at the National Council of Legal Advisers.

MARTA WITKOWSKA – Research Assistant at the Centre for Research on Prejudice which is an interdisciplinary research unit at the Faculty of Psychology, University of Warsaw. In her research, she is interested in possibilities of changing attitudes towards discriminated groups and the role of education in modelling intergroup relations. She dealt with evaluation of anti-discrimination measures aimed at improving attitude towards Chechen refugees in Łomża. She is currently coordinating evaluation of an educational programme "Living Library", which aims at promoting dialogue with representatives of minority groups in Poland.

University of Warsaw

equality, tolerance and respect

What is discrimination? When are we discriminated against, and when „only” someone was rude to us? What can we do if someone has treated us wrongly because of our nationality, age, gender or other features? It’s a question that is being often contemplated in different environments and situations. Although the University is a place where most of us feel comfortable, there are also cases of discrimination, unequal treatment or even abuse. The University is particularly concerned that such situations, if they occur, are met with an appropriate reaction so that victims do not feel helpless and perpetrators unpunished. For this reason, already in 2010, the Rector of the UW appointed the Committee for Preventing Discrimination at the University of Warsaw, which I have an honour to preside since its initiation. I strongly encourage everyone to familiarise with *Anti-Discrimination Guidebook* to get to know our rights and to see if we are not behaving in a way that implies unequal treatment. Also, to find out who can be contacted at the University of Warsaw in case of discrimination. You will find in the *Guidebook* i.a. contact details to all members of the Committee. If you have encountered unequal treatment – we are waiting for you.

prof. Małgorzata Fuszara
President of the Rector’s Committee
for Preventing Discrimination