

# SUMMARY

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OF THE REPORT  
ON THE ACTIVITY  
OF THE OMBUDSMAN  
IN POLAND IN 2014

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**Summary of the Report on the Activity of the Ombudsman in Poland in 2014**

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## INTRODUCTION

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In accordance with Article 80 of the Constitution of the Republic of Poland, everyone, pursuant to the relevant statutory regulations, has the right to file an application with the Human Rights Defender for assistance in protecting their freedoms or rights violated by public authorities. Filing a claim is free of charge and does not require any specific form. Broad bases for action, the absence of formal requirements and the absence of financial barriers contribute to the large number of applications directed to the Human Rights Defender. In 2014, a total of 57,127 applications were received, including 26,470 new case applications, in total, 113,247 individual pieces of correspondence were addressed to the Human Rights Defender.

As in previous years, issues in the fields of criminal, administrative and economic law, civil law, labour law and social security were dominant in complaints addressed to the Human Rights Defender.

The Human Rights Defender may also initiate proceedings on its own initiative, for example following analysis of information provided in the mass media. *Ex officio* proceedings were also undertaken in conjunction with information received by the Human Rights Defender (*inter alia* from correctional facilities, remand centres, Police) on so-called extraordinary cases involving public officials. In 2014, four hundred sixty-six (466) *ex officio* proceedings were undertaken by the Human Rights Defender, including eighty-five (85) in the form of a general intervention.

The Human Rights Defender's tasks are carried out with the help of the Office of the Human Rights Defender. These tasks were performed in 2014 by the Office in Warsaw and by the Offices of the Local Representatives in Wrocław, Gdańsk and Katowice, as well as by monthly field visits to receive applications in Częstochowa, Bydgoszcz and Lublin. In 2014, the activity of offices in Wałbrzych, Krakow, Kielce and Olsztyn was suspended in conjunction with financial difficulties.

People who feel that their rights or freedoms have been violated also may present their cases directly to employees of the Office of the Human Rights Defender. In 2014, 5,828 people took advantage of this form of contact with the Human Rights Defender.

The Human Rights Defender's free-of-charge helpline enjoys great popularity. In 2014, 38,258 people took advantage of this form of contact with the Human Rights Defender. In the course of conversations, employees of the Office of the Human Rights Defender provided basic advice and explanations to the interested parties, including basic information concerning the Human Rights Defender's activities and protection of human rights.

The number of cases in which people turning to the Human Rights Defender are given information on measures which they are entitled to take remains high. This

proves not only that applicants are generally unaware of legal remedies available to them, but it also reveals one of the oft-indicated weaknesses of the Polish legal system, *id est* the lack of universal access to legal assistance and legal information.

In the period covered by this document the Human Rights Defender addressed two hundred sixty-four (264) problem interventions. The Human Rights Defender took advantage of this procedure for signalling violations of rights or freedoms of an individual in cases when the practice of application of the law in a manner leading to violations was becoming commonplace. The interventions were also addressed when analysis of complaints submitted to the Human Rights Defender indicated that the source of violations of the rights of an individual was the content of legal regulations. In respect of these types of cases, in 2014 the Human Rights Defender addressed one hundred and twenty-eight (128) interventions with an application to undertake a legislative initiative.

The Human Rights Defender is also an active participant of proceedings before the Constitutional Tribunal. Taking advantage of the right to submit independent applications, in 2014 the Human Rights Defender submitted nineteen (19) applications to the Constitutional Tribunal for adjudication of the inconsistency of normative acts with superior regulations or with the Constitution, and furthermore in thirteen (13) cases joined proceedings before the Tribunal initiated upon filing of a constitutional complaint.

Questions of law directed by the Human Rights Defender's to expanded adjudication panels play a special role in relations with the judiciary. These questions support the unification of the judicature, and therefore constitute a legal measure whose purpose is to protect the principle of equality before the law. Non-uniform interpretation of the law exercised by courts in practice leads to violation of the principle of equality before the law. In conjunction with discrepancies discovered in the case-law of common courts in 2014, the Human Rights Defender submitted three (3) questions of law to be adjudicated by expanded panels of the Supreme Court. Discrepancies in the case-law of administrative courts were the basis for submission of two (2) questions of law adjudicated by expanded panels of the Supreme Administrative Court.

In respect of individual cases adjudicated by courts, the Human Rights Defender dispatched fifty-seven (57) cassation appeals to the Supreme Court against final verdicts and judgements from common courts. In respect of administrative cases, the Human Rights Defender dispatched twelve (12) appeals to voivodeship administrative courts and five (5) cassation appeals to the Supreme Administrative Court.

In the light of complaints examined by the Human Rights Defender, guarantees of the constitutional right of protection of health remain insufficient and unsatisfactory. Citizens perceive the public health care system financed as bureaucratized, inefficient and lacking a patient-centred focus. In their complaints, they make mention of

extremely long wait times for the provision of particular health services, problems with access to specialists and problems with access to preventive screenings.

In addition, complaints directed to the Human Rights Defender draw attention to the absence of effective instruments for the state to implement the constitutional imperative to conduct a policy designed to satisfy the housing needs of the population. At the local government level, there remain long lists of people who wait for years, often in tragic conditions, for council flats. There is a pressing need to reform cooperative housing law, which, despite several rulings by the Constitutional Tribunal, still awaits comprehensive and coherent reconstruction.

The problem of excessively long judicial proceedings continues to be signalled in complaints, and at the same time the institution of mediation is not used enough. Regulations concerning the provision of material assistance to crime victims appear to be ineffective, as only a small number of people take advantage of this form of assistance.

Modern technologies which facilitate the mass processing of personal data also create a significant risk to protection of personal data and the right to privacy. Intelligence and police agencies continue to acquire telecommunications data without ensuring necessary external institutional oversight. People whose data are collected are not informed of it after the fact once proceedings are completed and the risks for these types of proceedings cease to exist.

Despite the widespread nature of video monitoring, issues involving this phenomenon still have yet to be regulated in law, which poses an obvious threat to the constitutional right to privacy due to the impossibility of determining who, in which situations and on what conditions may use materials generated by such monitoring. Furthermore, acceptable limitation periods for the storage of such materials have not been specified.

Failure to provide comprehensive regulation of issues surrounding reprivatisation means that such reprivatisation takes place anyway, but is conducted by public administration authorities and courts. It is thus chaotic, and in many cases public utility facilities become the object of proceedings. Residential buildings handed over as a result of reprivatisation conducted in this manner are often occupied by tenants, which in turn provokes conflict between them and the new owner.

Activities of companies conducting door-to-door sales as well as activities of the shadow banking system pose a threat to consumers' rights. Complaints received in this respect from the elderly and from disadvantaged citizens indicate that they are unable to understand the legal meaning of the contractual terms and conditions proposed to them.

In respect of the rights of the disabled, it must be noted with concern that many public facilities still have not been adapted to such persons' needs. Access to railway stations and platforms, underground passages and other facilities is still hindered for them.

It is becoming more and more common to substitute employment under labour contracts with employment under civil law agreements. However, legislation is not keeping up with this process. At the statutory level there are no mechanisms to enable the state to effectively supervise these civil law forms of work. As a result, the constitutional obligation of the state to supervise the conditions for the performance of work goes unmet.

Positive trends in Polish law should also be highlighted, which include the creation of foundations of policy towards senior citizens and inter-generation policy in conjunction with existing demographic trends. Furthermore, regulations have been implemented which are designed to fulfil the constitutional requirement that the state exercise care over the family, such as the Large Family Charter.

The effectiveness of activities designed to reduce unemployment has also seen improvement. Reform of labour offices and reductions in contributions in exchange for employment of young adults have been introduced.

Furthermore, the Human Rights Defender engaged in cooperation with the Senate, within which the Senate undertook the issue of failure to make use of statutory authorisations. As part of this cooperation, legislative initiatives were also undertaken by the Senate with the aim of implementing recommendations made by the Human Rights Defender in interventions highlighting the need to amend existing legislation.

The year 2014 was the seventh year in which the Human Rights Defender performed the function of a national prevention mechanism consisting in performing preventive inspections of custodial detention facilities. As part of the performance of this task, one hundred and twenty-two (122) inspections were conducted in various detainment facilities, by a specialised group consisting of twelve (12) people. Furthermore, support during inspections performed as part of the national prevention mechanism was provided by employees of the Field Plenipotentiary Offices in Gdańsk, Wrocław and Katowice. External experts also frequently participated in the inspections, such as psychiatrists, psychologists, internists and geriatricians.

The year 2014 was the fourth year in which the Human Rights Defender performed tasks related to implementation of the principle of equal treatment, entrusted to the Human Rights Defender under provisions of the Act on implementing some regulations of the European Union in the field of equal treatment<sup>1</sup>. The scope of these tasks includes examining complaints concerning violations of the principle of equal treatment, analysing, monitoring and supporting equal treatment of all people, conducting independent research on discrimination, and developing and issuing independent reports and recommendations regarding discrimination-related issues. In the course of implementation of the aforementioned statutory obligations,

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<sup>1</sup> The Act of 3 December 2010 (OJ L No.254, item 1700).



in 2014 the Human Rights Defender issued three reports from the series “The Principle of Equal Treatment. Law and Practice”:

1. Dealing with Deaf and Deafblind People in Public Administration Offices. Analysis and Recommendations.
2. Equal Treatment of Patients – Non-Heterosexual People in Health Care. Analysis and Recommendations.
3. Support for Mentally Disabled People on the Labour Market. Analysis and Recommendations.

The Human Rights Defender also continued to monitor the activities of public institutions related to combating discrimination. The case-law of Polish and international courts is also the subject of systematic analysis as relates to implementation of the principle of equal treatment.

In conjunction with Poland's ratification of the Convention on the Rights of Persons with Disabilities<sup>2</sup>, the Human Rights Defender was also appointed as an independent authority for supporting, protecting and monitoring implementation of the Convention's provisions. The Human Rights Defender's comments related to the state of observance of the freedoms and rights of persons with disabilities were contained in the Human Rights Defender report on performance by Poland of obligations arising out of the Convention on the Rights of Persons with Disabilities in 2012-2014.

Bearing in mind the specificity of tasks concerning implementation of the principle of equal treatment and monitoring implementation of the Convention on the Rights of Persons with Disabilities in 2014, the Human Rights Defender appointed within its organisational structure the Group for Equal Treatment and Protection of Rights of People with Disabilities. The purpose of the Group is to ensure proper performance of the Human Rights Defender's tasks as an independent body for equal treatment and as an independent authority for supporting, protecting and monitoring implementation of the Convention on the Rights of Persons with Disabilities.

Furthermore, three expert commissions continue to work in the Office of the Human Rights Defender: the Expert Commission for Senior Citizens' Affairs, the Expert Commission for the Affairs of People with Disabilities and the Expert Commission for Migrant Affairs. The task of these Commissions is to support the Human Rights Defender in the performance of the Human Rights Defender's statutory tasks, in particular in monitoring observance of the principle of equal treatment and implementing provisions of the Convention on the Rights of Persons with Disabilities.

The Human Rights Defender cooperates with associations, civil society organizations, unions and foundations engaged in the protection of human and civic freedoms and rights. Among other activities, this cooperation involves meetings, seminars and conferences concerning a broad range of issues related to the

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<sup>2</sup> The Convention on the Rights of Persons with Disabilities of 13 December 2006 (OJ L 2012, item 1169).

observance of human rights held in the Office of the Human Rights Defender. They were primarily devoted to the priorities of the Human Rights Defender, namely protection of the rights of elderly and disabled people, as well as the rights of migrants.

Dissemination of knowledge about civil rights and information concerning the Human Rights Defender's activity is an important part of the Human Rights Defender's tasks. Cooperation with TVP INFO started in 2014, which led to the broadcasting of twenty (20) episodes of the programme "Rules of the Game" [PL 'Reguły Gry'] involving the Human Rights Defender and employees of the Office of the Human Rights Defender. In addition, cooperation continued with Programme I of *Polskie Radio* with the emission of a cycle of programmes by Janusz Weiss titled "Everything you'd like to know and you're not afraid to ask" [PL 'Wszystko, co chciałbyś wiedzieć i nie boisz się zapytać'].

The Human Rights Defender worked together with the Foundation of the Centre for Civic Education and the Association of Practitioners of Drama "Stop-Klatka" to implement the international project "An Evening with the Human Rights Defender". The purpose of the project was to strengthen the awareness of EU citizens concerning the rights set out in the Charter of Fundamental Rights of the European Union and their capacity to respond in the case of those rights being violated.

Meetings and debates were held both in and outside the Office of the Human Rights Defender on problems reported by citizens and non-governmental organisations. They concerned such issues as the right to a defence in criminal trials, the use of EU funds in the transition from institutional care to care provided at the local level, education of foreigners, education of deaf people, human rights in the context of development of the electronic services sector, implementation of a culture of communication in the public sphere and educational activities undertaken for inter-generational understanding. Two debates by Jan Nowak-Jeziorański were held with the participation of scholars and representatives of non-governmental organisations, devoted to the contemporary understanding of important issues: "How to Fight with Hatred" and "About Discrimination". Within the framework of publishing activities popularising the issues of human rights, thirty-one (31) publications were issued in print and electronic form, some of which were also prepared in English-language versions.

As part the Human Rights Defender's international activity, in 2014 cooperation continued with the International Human Rights Defender Institute (IOI), where the Human Rights Defender serves as a member of the Board of Directors at the European and worldwide level. A meeting of the European Board of Directors of IOI was held in Warsaw<sup>3</sup>. Following that, a session of the Board of Directors at the European and world level was held in Vienna<sup>4</sup>, with the Polish Human Rights Defender's participation. The session was devoted to such topics as the current activities of the Institute, a strategy for its development and its financial situation, issues of membership and

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<sup>3</sup> On 3–4 April 2014.

<sup>4</sup> On 27–29 October 2014.

cooperation with other Human Rights Defender organisations. Furthermore, it was determined that Poland would be the organiser of the next meeting of the European Board of Directors of IOI.

Cooperation of the Polish Human Rights Defender with ombudsmen from the Western Balkans, initiated by the Human Rights Defender's participation in the Ministry of Foreign Affairs project titled "*V4 – Western Balkans Expert Network on the Rule of Law and Fundamental Rights*", concerning cooperation among Ombudsmen from the states comprising the Visegrád Group and the Western Balkans, was very successful. As part of this regional cooperation a meeting of ombudsmen of the Visegrád Group states (V4) was also held in Poland and was attended by ombudsmen from the Czech Republic, Slovakia and Hungary.

Emily O'Reilly, the European Human Rights Defender, visited Poland in 2014. The present activities of the Polish Human Rights Defender and preparations for the National Seminar of the European Network of Ombudsmen in Warsaw in April 2015 were discussed during her visit. The Human Rights Defender also met with the Parliamentary Human Rights Defender of Ukraine, the Main Human Rights Defender of Turkey, representatives of the National Commission of Human Rights of Korea and representatives of institutions serving the protection of human rights from the Czech Republic, Georgia, the Republic of Kazakhstan and Federal Republic of Germany.

The adoption of new tasks by the Human Rights Defender in recent years (implementation of the mandate of the domestic prevention mechanism, the principle of equal treatment, monitoring implementation of the Convention on the Rights of Persons with Disabilities, monitoring improper activities of the Police and other services) has not yet received adequate financial support on account of the fact that the Human Rights Defender's budget was included in subsequent near-budgetary Acts. These tasks are thus not sufficiently executed. Still, as part of the national prevention mechanism, the manner in which the imprisoned are treated in places of detention must be regularly inspected. However, allowing for the present frequency of inspections, each particular detention facility will be inspected at a rate of once every fifteen (15) years, a tempo that cannot be considered regular. Hence, it is stated in the report on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that despite positive trends and the unquestionable commitment of the personnel of the Polish national prevention mechanism, greater resources (both human and financial) must be applied to effectively execute the tasks of the mechanism. The personnel and financial resources granted to the Polish Human Rights Defender for implementation of tasks in the field of equal treatment are also insufficient according to the European Commission Combating Racism and Intolerance. A similar position is taken by the Committee for All Forms of Discrimination Against Women and by the Committee for Elimination of Racial Discrimination.



# THE MOST IMPORTANT ISSUES IN THE FIELD OF CONSTITUTIONAL AND INTERNATIONAL LAW

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## A. Right to good legislation

The Constitutional Tribunal, in its verdict of 28 October 2014, took into consideration the Human Rights Defender's application and ascertained inconsistencies in the provisions of the Regulation of the Minister of Foreign Affairs governing the mode of proceedings before Consuls, as well as in the statutory authorisation to issue a Regulation governing this mode with the Constitution. The Tribunal pronounced that authorisation of the Minister to issue a Regulation in which the mode of initiating, conducting and concluding proceedings, dates for settling cases, appealing and transferring cases to Polish authorities would be normalised is incompatible with the Constitution, which stipulates the legal form of the statute is reserved for regulation of the rights and duties of individuals. Furthermore, the Court concurred with the Human Rights Defender's charge as regards inconsistency of the Minister's Ordinance of 1985 with the Constitution which, on account of failure to pass a Regulation, governed the mode of proceedings before Consuls. An Ordinance, as an act of internal law, may not be applied in determining the rights of individuals.

The Human Rights Defender expressed doubts as to the form of regulating parliamentary immunity in the Act on the exercise of parliamentary mandates. Classification of an MP's behaviour within or outside the scope of the mandate is key for the possibility to bring a Member of Parliament or Senator to justice in the case of violation of a third party's rights. The Human Rights Defender submitted an application in this matter to the Constitutional Tribunal. Expanding immunity to other activity which is inherently related to the exercise of a mandate raises doubts of a constitutional nature. Such a solution leads to violation of the principle of equality and the constitutional right to protection of one's honour and good name, and also of the principle of decent legislation. A person whose rights are violated as a result of the behaviour of a Member of Parliament is unable to predict whether a court will classify a given behaviour as covered by parliamentary immunity. This application awaits examination by the Tribunal.

The Human Rights Defender also applied to the Constitutional Tribunal regarding the vagueness of regulations imposing an obligation to submit financial disclosures on employees of state offices. The so-called Anti-Corruption Act lists a catalogue of positions for which an obligation to submit disclosures exists, and imposes this obligation on those holding positions of "equal status in remuneration terms" to the people listed in the catalogue. This expression can be understood as

imposing the obligation to submit a disclosure on people holding positions at the same level in the pay table. However, it is also possible to assume that a position of “equal status in pay terms” is held by an employee who receives remuneration equivalent to that of a person mentioned in the catalogue of persons under the obligation to submit a disclosure. The Human Rights Defender felt that the regulations governing this matter are at variance with the principle of a democratic law-governed state from which, *inter alia*, the principle of good legislation and the requirement to construct clear and precise regulations derive. The application is awaiting examination by the Tribunal.

## **B. Right to judicial protection of the rights and freedoms of citizens**

The Human Rights Defender took up a case concerning the refusal of courts to remunerate sworn translators for drawing up a certified copy of a letter in a foreign language. The scale of this phenomenon led the Human Rights Defender to ask the Minister of Justice declare its position, in particular to present an assessment of whether the current regulation properly guarantees the protection of sworn translators’ property rights in performing tasks for the judiciary. The Minister of Justice commissioned the Ministry’s Department of Courts, Organisations and Analyses of the Judiciary to analyse the problem, and the Minister undertook to inform the Human Rights Defender of the results.

The Human Rights Defender’s interest was raised by the issue of the absence of a requirement to provide a justification for the decision to dismiss a probation officer. A person dismissed from this function does not have the right to verify the legitimacy of such a decision within a multiple-instance framework. The Human Rights Defender applied to the Minister of Justice and the State Judicial Council, which shared the Human Rights Defender’s doubts and postulates in this respect. The Minister of Justice informed that the draft amendments to the Court Probation Officers Act currently being prepared introduce regulations concerning indication of the legal basis and written justification of the decision on the probation officer dismissal. The legislative process involving introduction of these regulations will be monitored by the Human Rights Defender.

The Human Rights Defender receives many complaints that disciplinary proceedings against people performing freelance legal professions (barristers, solicitors, notaries public) are excessively lengthy. Needlessly long review times weakens the efficiency and effectiveness of these proceedings. The Human Rights Defender recognised that excessively lengthy disciplinary proceedings in self-governing professions of public trust are unfavourable for both the aggrieved and the defendant in them. Such proceedings are of a repressive character, and the mere

fact that they are being conducted often generates unpleasant consequences for the accused. In a letter to the Minister of Justice the Human Rights Defender indicated that one possible solution to this problem could be placing disciplinary proceedings within the scope of regulations governing complaints on excessive duration. The Minister of Justice did not concur with the Human Rights Defender's position and stated that such a decision could have an adverse effect on the judiciary and professional associations.

The Human Rights Defender declared intent to participate in proceedings on a constitutional complaint concerning the rights of a person being screened in screening proceedings whose purpose is to admit this person to occupy a job position involving access to secret information. The person being screened does not have the possibility to review material collected in the course of the conducted proceedings, and is therefore deprived of a fundamental right of parties to such proceedings which is also a necessary condition for effectively appealing decisions during both administrative and administrative court proceedings. In the opinion of the Human Rights Defender, the lack of access to case records from screening proceedings under review and the absence of the possibility to learn the justification of the verdict make it impossible to effectively appeal the decision, and also disproportionately limits both the information autonomy of individuals as well as the right to court and associated right to appeal the rulings and decisions of public administration authorities. The Human Rights Defender is presently waiting for a trial date to be announced by the Constitutional Tribunal.

### **C. Freedom of speech and right to information**

The Human Rights Defender submitted notice of intent to participate in proceedings on a constitutional complaint concerning access to processed information. The right to information includes obtaining processed information to the extent it is particularly important for the public interest. In the opinion of the Human Rights Defender, courts apply additional restrictions to processed information which have no grounds in the regulation introducing the limitation. For this reason the Human Rights Defender entered an application for the ascertainment that such an interpretation of the regulation giving the right to obtain processed information only to those citizens who demonstrate that they are able to use the information in the public interest is inconsistent with the Constitution. The Human Rights Defender is waiting for the trial date to be announced by the Tribunal.

## D. Right to privacy and protection of personal data

The Constitutional Tribunal examined the Human Rights Defender's application for a determination that some regulations of the Act on collecting, storing and transplanting cells, tissues and organs are at variance with the Constitution. The Tribunal recognised that the regulation which provides for collecting and processing personal data in the register of potential bone marrow donors mentioned in the relevant legislation is consistent with the Constitution and does not constitute an excessive limitation on their right to privacy and information autonomy. At the same time, the Tribunal declared the unconstitutionality of regulation providing the Minister responsible for health matters and the State Transplant Council to have full access to all data of potential bone marrow donors. Such access is not necessary for the Minister and for the Council to perform their statutory tasks.

In its verdict of 18 December 2014, the Constitutional Tribunal agreed with the Human Rights Defender's charges concerning certain regulations of the Act on the information system applied for the protection of health. The Minister of Health was authorised under this Act to create medical registers by way of a Regulation. Certain registers were provided for in the Act, while others could be established through a ministerial Regulation. The Tribunal ascertained inconsistency with the Constitution of the regulations cited by the Human Rights Defender insofar as they provide for definition of the subject matter of medical registers in a ministerial Regulation. In addition, the Tribunal recognised that provisions allowing for registers to contain processed data other than the data indicated in the Act is inconsistent with the constitutional standard of the right to privacy. Furthermore, the Tribunal stated that a provision which provides for definition of the subject matter of the registers by way of ministerial Regulation is in violation of the Constitution, but registers established before the date the verdict was delivered may be still maintained.

The Human Rights Defender undertook the issue of broad accessibility of information on the health of citizens for enterprises from the insurance and banking sector. Improper processing of this type of sensitive data may violate the rights and freedoms of individuals. In a letter to the Minister of Health, the Human Rights Defender stressed that it would be of great benefit to specify what data and under what circumstances may be made available to entities conducting insurance activities. In response, the Minister of Health indicated that in order to ensure adequate protection of patients' data, a proposal was inserted into the assumptions for the draft Act on the information system applied for the protection of health and other Acts to make patients' electronic medical documentation available to medical employees only after a given patient's consent has been obtained in advance. Giving information on a patient's health condition to insurance companies takes place based on the Act on patients' rights and the Commissioner for Patients' Rights. Furthermore,



based on the Act on insurance activity, information on a patient's health condition may only be transmitted with that patient's consent.

A seminar on the subject of "The Impact of Processes Involving Analysis of Genetic Material on Rights of the Individual" was held in the Office of the Human Rights Defender, during which issues were discussed related to the necessity of creating coherent statutory solutions regulating the issue of genetic testing. Participants in the seminar voiced the conviction that it is essential to immediately undertake legislative work on legal regulations regulating DNA testing, while stating that certain issues should be dealt with in more detailed legislative acts. The Minister of Health, who concurred with this position, asked the Office of the Prime Minister to appoint an inter-departmental group to undertake legislative work on a draft Genetic Testing Act. The Human Rights Defender asked the Office of the Prime Minister to provide information on further progress in this matter.

## **E. Freedom of assembly**

In its verdict of 18 September 2014, the Constitutional Tribunal agreed to a considerable extent with the Human Rights Defender's application as regards doubts concerning the Assemblies Act and stated that the portion of the regulation determining the number of participants of an assembly as "at least 15 persons" is at variance with the Constitution. When examining charges raised with regard to the possibility to forbid the organisation of two assemblies at the same time, the Tribunal recognised that insufficient determination of which meeting should be acknowledged as announced "earlier" is at variance with the Constitution, and hence in relation to which assembly the ban will be issued. However, regarding financial liability of the organizer of an assembly, the Tribunal held that the disputed regulation was constitutional, but only when understood as not providing grounds for financial liability of the organiser of an assembly for damage for which participants of the assembly are at fault (a so-called interpretative verdict). Furthermore, the Tribunal agreed with the need to change the time limit for submitting notification of an assembly from three days to three working days before the day of the scheduled assembly. The Tribunal's verdict imposes a duty on the legislator to amend the regulations. The Human Rights Defender will monitor the course of the legislative process.

## **F. Freedom of conscience and religion**

The Human Rights Defender submitted an application to the Constitutional Tribunal to determine that the regulations of the Animal Protection Act are at variance

with the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as the Charter of Fundamental Rights of the European Union insofar as they do not allow animals to be subjected to particular methods of slaughter for the exclusive needs of religious communities, while at the same time stipulating criminal liability of a person performing such slaughter. The Human Rights Defender submitted that the absence of regulations in Polish allowing for ritual slaughter violates the constitutional guarantee of freedom of religion. The Tribunal recognised that the absence of permission to subject animals to slaughter in a slaughterhouse according to particular methods required by religious rites as well as the imposition of criminal liability on people performing ritual slaughter are inconsistent with the Constitution.

## G. Right to education

The Human Rights Defender took an interest in the increasingly frequent practice of the operation of public schools being handed over by local government authorities to private entities. Regulations which were intended to ensure maintenance of the smallest institutions at risk of liquidation serve as the basis for forming networks of public schools. In a letter to the Minister of Education the Human Rights Defender stressed that this model of the education system may be at variance with the Constitution in respect to the constitutional guarantee of equal and universal access to education. In response, the Minister explained that handing over public schools to private entities does not impact implementation of the constitutional rights of students.

The regulations of the Foreign Service Act determine that eligibility for a refund of fees for education of children is only possible if the children are not provided with the possibility to attend public primary or secondary school free-of-charge in the receiving state. Nursery school is not included in the refund of costs of education at all. The Human Rights Defender asked the Minister of Foreign Affairs to prepare a position in a case concerning the differences in the legal situation of students and children attending nursery school. In response, the Minister indicated that the obligation to attend nursery school and compulsory education at school are different issues in relation to the refund of fees. The obligation to send a child to nursery school for a period of one year results from the Educational System Act, whereas the Foreign Service Act addresses education at school. The Human Rights Defender filed an application in this case to the Constitutional Tribunal and is currently awaiting a trial date.

The Human Rights Defender stated its position on the issue of proceedings initiated following a constitutional complaint recently filed by secondary school

graduates whose examinations were invalidated. The complainants indicated that present regulations make it impossible to review the legitimacy and legality of invalidation of the examination. The Human Rights Defender indicated that invalidation of the examination in practice consists in abandoning substantive assessment of the answers given on the examination, whereas the absence of a result functions as a sanction. Meanwhile, invalidation of the examination, in contrast to assessment, is equivalent to an administrative matter and should be reviewed for legality, meaning for compliance with applicable procedures for invalidating an examination. In the opinion of the Human Rights Defender, the relevant regulations are at variance with the Constitution. The application awaits examination by the Tribunal.

## H. Voting rights

In the opinion of the Human Rights Defender consideration should be given to extending the scope of voters eligible to cast an absentee ballot by correspondence in order to make it easier for elderly people, people with disabilities or people experiencing other limitations who are unable to go to a polling station to take part in the voting process. Furthermore, voters outside the country are obliged to bear some of the costs of absentee voting, whereas persons voting in the country are exempted from such charges, which results in inequality of voters based on their place of residence. The Human Rights Defender also called for introduction of the possibility for voters to choose their voting district, and for the introduction of a statutory obligation for municipalities to organise free-of-charge transport of elderly and disabled voters to polling stations. Furthermore, in an intervention directed to the Chairman of the Special Committee for Changes in Codifications of the Sejm of the Republic of Poland, the Human Rights Defender signalled the need to introduce solutions concerning voting in so-called separate districts: health care institutions and social care centres, in accordance with which district electoral committees would have to cooperate with the committee exercising oversight over the district committee in passing an ordinance on the use of an auxiliary voting urn. Part of the Human Rights Defender's postulates were taken into consideration in the adopted Act amending the Election Code. Some solutions proposed by the Human Rights Defender were also included in the draft of the Act on amending the Election Code drafted by the President of the Republic of Poland.

The issue of depriving legally incapacitated people of voting rights arouses controversy both inside the community of legal scholars and among social organisations. In practice, after a decision on incapacitation (full and partial) has become final and binding, the court notifies the authority responsible for voter

registration to strike the legally incapacitated person from the rolls. In an intervention directed to the Prime Minister, the Human Rights Defender signalled the urgent need to regulate the voting rights of this group of citizens. In response, the Minister of Internal Affairs stated that the issues of voters and voting rights were not covered by any of the departments of governmental administration. The Election Code indeed provides certain competences to the minister responsible for internal affairs, but in the opinion of the Minister this does not justify legislative work by any ministry to begin legislative work on amending the relevant Act in respect of the voting rights of legally incapacitated persons. The Human Rights Defender continues to follow the case.

# THE MOST IMPORTANT ISSUES IN THE FIELD OF CRIMINAL LAW

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## A. Right to good legislation

The Human Rights Defender directed an intervention to the Minister of Justice concerning the issue of unlawful use of computer programmes and data, stating that regulation in the criminal code defining the criminal act, owing to legislative omission, does not properly express the *ratio legis* thereof, which may lead to doubts of a constitutional character. Interpretation of the regulation requires specification of the crime's perpetrator. The Minister of Justice, who concurred with this view, will confer with the Criminal Law Codification Committee before making a decision on initiating legislative work. The case is being monitored by the Human Rights Defender.

In an intervention with the Minister of Internal Affairs the Human Rights Defender drew attention to the absence of regulations in the Act on means of direct coercion and firearms regulating the possibility to file a complaint against the use of means of direct coercion or firearms by authorised entities. The Minister did not agree with this position, indicating that while the Act does not, in fact, directly contain any regulations regulating the possibility of filing a complaint against the legitimacy of use or application of means of direct coercion, this does not, however, mean that the rights of people against whom such means have been used are insufficiently protected. The Human Rights Defender submitted a second intervention in this matter.

In an intervention to the Minister of Justice the Human Rights Defender asked for work to be undertaken in the following areas: the urgent need to amend the Act on state compensation to victims of certain crimes, the possibility to initiate mediation in cases before a decision to file charges is issued, initiation of legislative work on the Act on the profession of mediator, the introduction of mediation during the course of a custodial sentence, the obligation of training courses for mediators as well as their periodic assessment, the absence of the possibility to exempt parties to civil proceedings from mediation costs, and the absence of regulations governing public legal aid for the poor. The Minister provided information on activities undertaken, and the Human Rights Defender will monitor the progress and effects thereof.

## B. Right of defence

The Human Rights Defender put forward an application to the Constitutional Tribunal to ascertain that regulations of the Code of Criminal Procedure are inconsistent with the Constitution insofar as they do not provide suspects/the accused nor defence lawyers with the right to participate in court hearings reviewing motions concerning the application of other means of coercion than detention and temporary arrest towards the suspect/accused. Ensuring efficient and quick proceedings is not a justification for limiting the right to a defence and the right to court.

In an intervention to the President of the Senate the Human Rights Defender drew attention to the urgent necessity to implement the verdict of the Constitutional Tribunal of 8 October 2013. The Tribunal held the regulations of the Code of Criminal Procedure to be inconsistent with the Constitution insofar as they do not provide for the possibility to appeal against an order of the chief justice of a court refusing the designation of a court-appointed defence lawyer for a party which submitted such an application, and insofar as they do not provide for the possibility to appeal against a decision of the court to revoke the designation a court-appointed defence lawyer. The Chairman of the Legislative Commission of the Senate informed of the preparation of a draft amendment to the Code of Criminal Procedure which will implement the verdict of the Constitutional Tribunal.

In a letter to the Minister of Justice the Human Rights Defender raised the issue that a decision refusing designation of a court-appointed defence lawyer in proceedings in cases involving petty offenses may not be appealed, which, in the opinion of the Human Rights Defender, violates constitutional standards. The Minister of Justice concurred with this view. As a consequence, the Senate undertook legislative work in this matter. The Human Rights Defender will monitor progress in this matter.

In an intervention to the Minister of Justice the Human Rights Defender indicated that exclusion of judicial review of the prosecutor's ruling refusing the admission of a representative of a person who is not a party to a preliminary investigation is at variance with the Constitution. The Minister informed that the Criminal Law Codification Committee has been asked for its opinion on the issue, and when this opinion is obtained the Human Rights Defender will receive information about the Minister's position. The issue is being monitored by the Human Rights Defender.

The Constitutional Tribunal examined the Human Rights Defender's combined applications on exercising the right to a defence lawyer and access to case files during a preliminary investigation activities conducted in respect of a person regarding whom there is a justified basis for preparing charges and acknowledged that the disputed regulations were at variance with the Constitution. In conjunction with the above, appropriate legislative work has been undertaken.

## C. Costs of proceedings

The Human Rights Defender joined proceedings before the Constitutional Tribunal on a constitutional complaint concerning remuneration for defence attorneys related to free legal assistance, indicating that the regulation governing the capacity to issue statutory authorisation provides the Minister of Justice with excessively broad freedom in determining the value of remuneration for an attorney's activity. As a consequence, the Minister issued regulations which make it impossible for a court to freely examine such cases, as they establish very limited circumstances for adjudication of such costs.

## D. Right to a fair trial

The Human Rights Defender joined proceedings in a constitutional complaint concerning criminal code regulation which deprives a person placed in a psychiatric hospital of the right to participate in court hearings on continuation of the application of this protective measure. In the opinion of the Human Rights Defender, the participation of a perpetrator placed in a psychiatric hospital in such hearings should be obligatory, unless a given individual voluntarily resigns from participation in the hearing. The case remains in progress.

The Human Rights Defender entered an application to the Constitutional Tribunal to ascertain that regulation in the Code of Petty Offences failing to take account of the premise of "insignificant social harm of an act" as grounds for excluding responsibility for an offence is at variance with the Constitution. In the opinion of the Human Rights Defender the court in the case concerning an offence, as in other penal procedures, should be able to make independent decisions in connection with the circumstances of the case, including determining the absence of criminal nature of the act, which will correspond to the principles of a fair trial. The application awaits examination by the Tribunal.

The Human Rights Defender joined proceedings on a constitutional complaint concerning regulation of the Executive Criminal Code which provides for assessing a more severe substitute punishment than provided for at the time of commission of the criminal act. In the opinion of the Human Rights Defender this regulation violates the following principles: trust of the citizen in the state and to the law constituted by it, application of the law most beneficial for the perpetrator and non-retroactivity. The case remains in progress.

The Human Rights Defender entered an application to the Constitutional Tribunal to determine that the regulation of the Code of Administrative Offences governing the so-called ideal concurrence of regulations, which occurs when in one

act a perpetrator fulfils the premises of two or more regulations constituting an offence and crime at the same time, is at variance with the Constitution as violating the principle of “no double jeopardy” in the same case. The Human Rights Defender is waiting for the trial date to be determined by the Constitutional Tribunal.

In an intervention with the Minister of Justice the Human Rights Defender drew attention to absence of protection of witnesses in cases involving offenses in respect of confidentiality of their personal data. The legislator satisfied the Human Rights Defender’s demands in this respect as, in accordance with the regulations of the Act on protection and aid for the aggrieved and witnesses, the appropriate changes were made to procedures in cases involving offences which enable proper application of criminal procedure rules concerning non-disclosure in interview protocols of the workplace and place of residence of aggrieved parties and the witnesses.

In an application to the Constitutional Tribunal the Human Rights Defender called into question the regulations of the Criminal Tax Code and of the Tax Code which enable suspension of the limitation period for tax liabilities at the moment criminal proceedings are initiated in the case of tax evasion cases. This solution facilitates an extension of the limitation period on tax liabilities for an unlimited time. Therefore, the taxpayer is deprived of the guarantee of a limitation period and of the right of defence as the criminal proceedings are still conducted in the *in rem* phase where the taxpayer does not have the status of a suspect. The case remains in progress.

Referring to interventions directed to the Minister of Justice over several years, the Human Rights Defender asked the Chairman of the Parliamentary Special Committee for amendments in codifications for information on the intended date of completion of work on the Senate’s draft of the Act on amendments to the Code of Criminal Procedure imposing the obligation on courts of sound and audiovisual registration of the course of criminal trials. The case is being followed by the Human Rights Defender.

## **E. Proceeding in case of penalty notices**

The Constitutional Tribunal examined the Human Rights Defender’s application and acknowledged that depriving a punished individual of the right to revoke a fine issued on the basis of a normative act the Constitutional Tribunal has ruled as inconsistent with a ratified international agreement, domestic statute or Constitution to be at variance with the Constitution.



## F. Personal freedom

The Human Rights Defender joined a proceeding on a constitutional complaint and stated the opinion that regulations of the Act on the quashing of rulings issued against persons repressed for actively supporting the independence of Poland were invalid to the extent that they do not grant the right to compensation for injuries suffered and damages for harm from the State Treasury to repressed individuals in respect of whom decisions on temporary detention and filing of arrest warrants which were issued but not exercised are at variance with the Constitution. Despite the fact that the Tribunal discontinued the proceedings, the Human Rights Defender signalled to the Minister of Justice the need to resolve through legislation the problem of the Act limiting the subjective scope of its application.

The Human Rights Defender entered an application to the Constitutional Tribunal to determine that certain regulations of the Act on dealing with people with psychological disorders or who pose a threat to the life, health or sexual freedom of others are at variance with the Constitution, indicating *inter alia* that the scope of potential addressees of the Act is too broad. The Act does not determine temporal criteria for issuing opinions that serve as the basis for entering an application to determine that a given person poses a threat; it also introduces different grounds than those the Act on Police for the use of field inspections, and does not specify therapeutic proceedings to be undertaken in the Centre established by the Act. The application is awaiting examination by the Court.

The Constitutional Tribunal also received the Human Rights Defender's application questioning statutory and executive regulations which govern searches of people and their effects as well as searches of vehicles by public officials. The regulations are imprecise and inadequate, and in certain cases the legislator has not provided for appeal against activities infringing the freedoms and rights of the individual, which is inconsistent with the constitutional right to court. The case remains in progress.

## G. Safety of citizens

In interventions with the Prosecutor General and the Minister of Justice the Human Rights Defender drew attention to the issue suboptimal application of preventative measures aimed at isolating the perpetrators of domestic violence from their victims. The Prosecutor General declared that the appropriate orders were contained in guidelines already issued, while the Minister informed the Human Rights Defender of information and educational activities being conducted as well as training courses held for members of the judiciary.

The Human Rights Defender repeatedly indicated the urgent need to amend the Act on state compensation to victims of certain crimes, since current regulation does not provide the victims of crimes with real assistance, and even contributes to their repeated victimisation. The Act has yet to be amended. The Human Rights Defender asked the President of the Republic of Poland, the Presidents of the Sejm as well as the Senate and Chairmen of the Parliamentary Clubs to consider working to guarantee adequate protection for the rights and dignity of crime victims. The case remains the subject of the Human Rights Defender's interest.

In interventions with the Prosecutor General on the activities of public officials in the editorial office of "Wprost" magazine, the Human Rights Defender indicated that all of the activities of state authorities involving journalistic confidentiality and limiting the guarantees resulting from it must be proportional, adequate, sufficiently justified, subject to review and used only as a last resort when it is impossible to determine circumstances based on other evidence. However, the Prosecutor argued *inter alia* that the matter of legality and legitimacy of trial-related decisions and trial-related activities undertaken based on those decisions was assessed positively by the court. The Human Rights Defender will continue to act in this matter.

The Human Rights Defender entered an application to the Constitutional Tribunal questioning the consistency of the regulations concerning the so-called 'club ban' (imposed by sports clubs) with the Constitution. A repressive measure is applied pursuant to legal regulations which are not of a universally binding character, but rather created by private entities, and appeal against it is a matter of administrative law. The concentration of elements relevant to various fields of the law and the arbitrary application of this measure remains in collision with the principle of trust of the citizen in the state and the law constituted by it. The case remains in progress.

The Human Rights Defender joined proceedings on a constitutional complaint and expressed the view that the Criminal Code – insofar as it penalises a verbal assault committed in private of a public officer or of a person assigned to help the officer – is inconsistent with freedom of expression and the principle of proportionality of restrictions on it, and constitutes an excessively repressive measure of the state by violating the constitutionally protected freedom of expression of views. The Tribunal, however, did not agree with the Human Rights Defender's position and held the regulation of the Criminal Code to be consistent with the Constitution. In an intervention to the Minister of Justice the Human Rights Defender called for the introduction of regulation into criminal procedure articulating an obligation to respect the dignity of the victims of crimes and their families – in accordance with the relevant Directive of the European Parliament and the Council. The Minister understands the need to respect and protect the rights of such people and at the same time agreed there was a need to introduce such regulation into the Code of Criminal Procedure.

## H. Protection of the rights of persons deprived of liberty

In an application to the Constitutional Tribunal the Human Rights Defender questioned regulations determining the terms and conditions for taking warm baths by detained and imprisoned men. A minimum standard was determined in the contested regulations in accordance with which a condemned or detained person (temporarily arrested) may take a warm bath at least once a week. This may be increased, yet the legislator left all decisions in this respect to prison administration. In the Human Rights Defender's opinion the regulations, issued in contravention of statutory authorisation, violate the principle of humane treatment of imprisoned individuals. The case remains in progress.

In an intervention to the Minister of Justice the Human Rights Defender raised the problem of Prison Service officers improperly carrying out the obligation to communicate information to prisoners on their rights and obligations. In response, the Minister explained that individuals newly admitted to a penitentiary facility are provided with educational, protective and psychological care. Each prisoner is provided with contact to an educator. Persons newly admitted to penitentiary units are given an appropriate guide, which was updated in 2014. It is a summary of knowledge for prisoners on their rights and obligations written in accessible language.

In the course of preventive inspections in penitentiary units and during examination of individual complaints, attention was paid to the problem of the legitimacy and frequency of body searches. At present, information on conducting a body search, the grounds for doing so and about the people conducting it is not kept in Prison Service documentation. In light of the case-law of the European Court of Human Rights (ECHR), it is urgently necessary to consider the issue of the compulsory character of body searches of so-called dangerous prisoners in each instance of leaving and returning to a cell. The Human Rights Defender intervened with the Minister of Justice in the above matter. In response, the Minister informed that the regulations in force concerning the methods of conducting a body search are formulated too broadly and may violate the standards defined in the European Convention on Human Rights. The draft of a new Regulation on protection of organisational units of the Prison Service is expected to provide more details in this regard. Referring to the situation of dangerous prisoners, the Minister explained that after organisational changes are introduced, action will be taken to amend the statutory regulations imposing the obligation on Prison Service officers to conduct body searches on a prisoner leaving or returning to the cell.

The issue of the use of temporary arrest as part of a European arrest warrant was the subject of a legal question by the Human Rights Defender to the Supreme Court, which refused to pass a resolution, stressing in its ruling that the Court does not examine the evidentiary basis of the order, but the defendant does have the

possibility to present arguments in his own defence. The defendant may provide new evidence and demonstrate the existence of statutory circumstances obliging or authorising the court to refuse to issue an European arrest warrant (EAW). The court's decision should be based on evidence establishing a high probability that the suspect has committed the crime of which he is accused.

In a letter to the Director General of the Prison Service the Human Rights Defender raised the issue of prisoners being granted visits in a manner at variance with the regulations of the Executive Criminal Code. The Director admitted that in certain penitentiary units the manner in which visits are granted does not satisfy statutory requirements and presented a detailed plan for remedying this situation.

The Human Rights Defender intervened with the Director General of the Prison Service on frequently reported cases of sentences served in an improper penitentiary facility based on membership in a classified subgroup. The Director explained that due to the excessive population of penitentiary units, their classification has been changed several times and prisoners were transferred in order to provide them with adequate residential space. The Human Rights Defender will undertake further activities in case irregularities are discovered.

In another intervention with the Director General of the Prison Service the Human Rights Defender drew attention to the ban applied in closed penitentiary facilities on washing one's own clothing and the obligation to have the prisoner's family wash it. In the opinion of the Human Rights Defender such procedures are in conflict with implementation of objectives of custodial institutions. The Director General stressed that rooms for washing and drying clothing are placed in units where possible due to available space, and others will be built.

The Human Rights Defender intervened with the Director General of the Prison Service on the absence in penitentiary facilities of a sufficient level of safety for mentally disabled people. The Human Rights Defender also voiced a demand to expand the scope of training courses for Prison Service officers to cover the issue. The Director General took the Human Rights Defender's demands into consideration for the new programme of training courses. In addition, the Human Rights Defender appealed to the Prosecutor General to examine roughly two hundred (200) cases concerning mentally disabled prisoners in penitentiary facilities. The Prosecutor assured that this category of cases was up for review in respect of initiating pardon or cassation procedures.

In an intervention with the Director General of the Prison Service the Human Rights Defender also raised the issue of the alternating paid and unpaid employment of prisoners. The Director admitted that the practice was unlawful. This issue will be discussed at official briefings with Prison Service officers. The Human Rights Defender will again ask for information in this matter.

The Human Rights Defender intervened with the Director General of the Prison Service on the manner penitentiary facility administration handles correspondence

received by prisoners from their defence lawyers and attorneys at law on data carriers in the form of USB sticks. The Director stressed that development of optimal solutions, particularly towards those under temporary arrest, requires legislative changes.

The Human Rights Defender intervened with the Minister of Justice on the need to amend the Regulation determining the manner in which testing for the presence of alcohol, intoxicants or psychotropic substances in a prisoner's body is conducted. The Minister assured that the regulations presently in force would be amended according to the Human Rights Defender's expectations.

In a letter to the Director General of the Prison Service the Human Rights Defender raised the issue of provision of access to public information to prisoners. The Director explained that in the second quarter of 2014 the prisoners had been provided with access to selected websites. Furthermore, the issue is being considered to regulate the relevant procedures in the internal regulations of penitentiary units. The Human Rights Defender will monitor this process.

In conjunction with the failure to amend regulations of the Executive Criminal Code referring to the accumulation of money transferred to a prisoner to a selected bank account at the time of release from a penitentiary facility, the Human Rights Defender again appealed to the Minister of Justice, drawing attention to the myriad practices in the application of this provision by authorities.

Since the content of the new Regulation on prisoners' living conditions does not contain regulations concerning safety barriers on bunk beds for purposes other than those designed for dangerous prisoners, the Human Rights Defender applied to the Minister of Justice to appropriately amend the regulations. The Minister explained that while this issue is not included in the new Regulation, efforts are being made to equip all bunk beds in residential cells with adequate safety measures.

The Constitutional Tribunal took into consideration the Human Rights Defender's application and held the regulations of the Executive Criminal Code providing for the presence of an officer who is not a medical professional in the course of a medical examination of a prisoner to be inconsistent with the constitutional right to privacy. Work on amending this regulation is in progress.

In an intervention with the Minister of Internal Affairs, taking into consideration the aforementioned verdict of the Tribunal, the Human Rights Defender drew attention to the provision of the Regulation governing the issue which says that the doctor performing an examination of a detainee decides about the presence of a uniformed officer during the examination. The mode of conducting medical examinations of detainees apprehended by officers of the Border Guard and Government Protection Bureau is analogically defined in the Regulations. The Minister agreed with Human Rights Defender's view that interference with the constitutionally-protected right to privacy may only be based in statutory regulations.

## I. Protection of the rights of juveniles

Regarding the appointment of a guardian for an aggrieved juvenile in criminal proceedings in which the accused is one of the juvenile's parents, the Human Rights Defender drew attention to the need to implement the decision of the Constitutional Tribunal of 11 February 2014 indicating areas which should be regulated by the legislator, i.e. defining the requirements which should be satisfied by people appointed to perform the function of a guardian and explicit granting to parents in the regulations of the Family and Guardianship Code the right to information on the course of proceedings concerning their child when the child is represented by a guardian. The Human Rights Defender asked the Marshal of the Senate to consider having the Senate undertake activities in that regard. The matter remains the subject of the Human Rights Defender's interest.

In the opinion of the Human Rights Defender provisions contained in the Regulation of the Minister of Justice on correctional centres and shelters for juveniles are inconsistent because while they define a body search they do not regulate in which situations and by which entities such searches may be conducted, and at the same time the notion of a body search is used without indication of the scope of the meaning of that concept. Doubts are also raised by the fact that limitation of the right to privacy related to conducting body searches of juveniles is based on the provisions of the Regulation. The Human Rights Defender asked the Minister of Justice to take a position in the case and to engage in adequate legislative work. The Minister informed that these issues would be covered by the legislative work being conducted in the Ministry on the draft assumptions to the draft of the Act on amending the Act on proceedings in cases involving juveniles.

The absence of relevant legal regulations mean that juvenile pregnant women and mothers leave a juvenile offenders' institution or educational centre at the behest of directors of these institutions, and therefore the resocialization process is interrupted. In the opinion of the Human Rights Defender, resocialization institutions should have at their disposal houses or departments, or even rooms for mothers and children, in which juveniles could spend time with their children in adequate conditions. Bearing in mind public authorities' obligation to provide them with special care, including the protection of family life and motherhood, this legislative omission should be immediately remedied by the legislator. The Human Rights Defender asked the Minister of Justice to urgently undertake legislative work in cooperation with the Minister of Education to implement systemic changes. The matter will be followed by the Human Rights Defender.

In the course of preventive inspections by the National Prevention Mechanism [PL - Krajowy Mechanizm Prewencji - KMP], the problem was observed of inadequate adaptation of the infrastructure of penitentiary units and institutions for juveniles to

the needs of the disabled, which may violate the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities. The Human Rights Defender asked the Minister of Justice to take a position on the matter. The Minister informed that physically disabled prisoners are, if possible, placed in adapted cells on the ground floor, with independent access to television rooms, prison yards and prison baths and clinics. The Minister also ensured that the needs of the physically disabled are taken into consideration when constructing new facilities and in during renovations. Regarding institutions for juveniles, the Minister indicated that one young offenders' institution and one shelter for juveniles would be adapted to the needs of the disabled.





# THE MOST IMPORTANT ISSUES CONCERNING LABOUR LAW, SOCIAL SECURITY AND UNIFORMED SERVICES

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## A. Issues regarding labour law

One of the Human Rights Defender's key demands is to adapt employment legislation to the provisions of the European Social Charter determining the right of employees for compensation of overtime with increased remuneration, subject to exceptions in special cases. The European Committee of Social Rights recognised that free time may be compensation for working overtime instead of increased remuneration, but the amount of such free time should be higher than the amount of hours worked overtime. Furthermore, the Committee stated that it is compatible with the provisions of the Charter to deprive employees holding managerial positions and high public officers of the right to allowances for working overtime. Therefore, there is a need to limit the group of employees deprived of the right to allowances for working overtime and to introduce regulation which grants greater free time than the amount of hours worked overtime instead of increased remuneration. The Human Rights Defender has signalled in vain for years the need to amend certain labour regulations (e.g. concerning local administration and civil service employees) and the Labour Code to achieve consistency with the provisions of the European Social Charter. In the case of the absence of legislative activity it will be necessary for the Human Rights Defender to consider the possibility to apply to the Constitutional Tribunal.

In the opinion of the Human Rights Defender, the situation on the labour market (civil law contracts, temporary contracts, self-employment) indicates that the state is insufficiently implementing the constitutional obligation of protection of work. In accordance with the Constitution work is protected by the Republic of Poland, whereas the state supervises the conditions of performing work. In view of the insufficient protection of work, it seems necessary to undertake legislative activity to create a system of protection in relation to people employed outside of labour relationships. At the same time, it is obvious that employment legislation interventions must not violate the character of civil law relations and relationships which arise between contractors and ordering parties. However, it is necessary to initiate a public debate on forming a system of protection of employment outside of labour contracts and of execution of the state's obligation to monitor the conditions in which such work is performed. The issues remain at the centre of the Human Rights Defender's interest.

The issue of the scope of the National Labour Inspectorate authorities' competence in examining cases resulting from submission by an employee of an application to enter employees into records of those working in special conditions or performing work of a special character requires statutory regulation. In the opinion of the Human Rights Defender, it is necessary to enable labour inspectors to issue orders to place employees performing work in special conditions or of a special character into the relevant register. Placing or failing to place the employee into such a register translates into the scope of data passed on by the premium payer in notifications on work in special conditions or of a special character, and as a consequence, it affects determination of the period of work in special conditions or of a special character, which is of fundamental importance when examining fulfilment of the conditions of the right to a bridging allowance. The Human Rights Defender's legislative application was adopted for implementation by the Minister of Labour and Social Policy.

Changes were introduced into the Educational System Act facilitating the engagement of teacher assistants in primary schools. The assistant is engaged under the terms and conditions provided for in the Labour Code, but the remuneration must not be set higher than that provided for a qualified teacher. In accordance with the Educational System Act, the legal status of the employees who are not teachers engaged in schools run by local government authorities is determined by regulations on local self-government employees. A teacher assistant should be treated as a local self-government employee, with application of the regulations of the Act on local self-government employees and of the Regulation of the Council of Ministers on remunerating local self-government employees. A similar problem arose in respect of engaging people who are not teachers but with preparation the headmaster feels is adequate for conducting given classes. In the opinion of the Human Rights Defender, legal regulations amending the Educational System Act adopted in respect of individuals who are not teachers as well as teacher assistants should be changed in order to remedy inconsistencies. The issue remains in the centre of the Human Rights Defender's interest.

In the light of one complaint the issue emerged of the absence of the right to remunerate a judge who lost the possibility to retain the right to remuneration on account of absence from work for a period longer than one year due to illness and did not acquire the right to remuneration as an emeritus justice. In the opinion of the Human Rights Defender, to the extent the regulations of the Act on the system of common courts do not provide for the right to remunerate a judge absent from work on account of illness lasting over one (1) year when the issue of changing the judge's status to that of emeritus justice has not ultimately been settled raises constitutional doubts. The Constitution holds that judges are to be provided with conditions for work and remuneration consistent with the dignity of the office and

to the scope of their obligations. Possibilities for questioning the constitutionality of this regulation are being analysed.

## **B. Right to social security**

The Human Rights Defender joined proceedings on a constitutional complaint concerning the basis for premiums for old-age and disability insurance of an employee delegated to work abroad. In the opinion of the Human Rights Defender, the questioned provision of the Regulation, i.e. the provision authorising application of a sum equivalent to the national monthly average remuneration as the basis for old-age and disability insurance premiums in the reduction of an employee's income by the equivalent of daily allowances on account of delegating to work abroad when that sum is higher in a given month than the employee's remuneration leads to an unlawful burdening of employees and employers with increased social insurance premiums, and therefore it must be held as disproportionate interference in the right to property. Since this was not done by way of statute, the constitutionally-protected right to property cannot be violated in this way. The case awaits examination by the Constitutional Tribunal.

Having conducted an analysis of changes introduced in certain Acts in conjunction with definition of the principles of payment of retirement pensions from funds held in open pension funds (OFEs), the Human Rights Defender entered an application to the Constitutional Tribunal stating that the conditions specified in the Act for resuming the transfer of premiums to OFEs in relation to insured people born after 31 December 1948 and before 1 January 1969 who voluntarily entered into a selected OFE remain in conflict with the Constitution. In the opinion of the Human Rights Defender, it may also legitimately be said that the regulation contained therein of compulsory remission of 51.5% of assets of OFEs violates the principle of trust in the state and the law constituted by it (the principle of loyalty). Observance of this principle is of special importance considering the changes made to previous regulations which shaped the legal situation of OFE members.

In the opinion of the Human Rights Defender, the legal and factual situation since 1999 generated a social belief that the existing pension and OFE system is stable, as a permanent structural element of this system. Imposition on the insured (born after 31 December 1948 and before 1 January 1969) of an obligation to submit a statement on transferring their premiums to OFEs is at variance with the principle of trust in the state and the law constituted by it. The obligation to again confirm the will to join an OFE for this group of insured also leads to a disproportionate violation of the constitutional principle of freedom. By contrast, the fact that the members of OFEs were not granted the right to voice their opinion on moving funds in the

accounts of OFE to subaccounts of the Social Insurance Institution (ZUS) undermines the trust of citizens in the state. The questioned solution also violates the principle of non-retroactivity because it interferes in the pension rights of members of OFEs, retroactively determining in the new regulations financial consequences (pay-as-you-go financing) not present under the former law (equity financing). The Human Rights Defender's application was attached to the President of the Republic of Poland's application, submitted earlier, to examine them altogether under a shared catalogue number on account of the identity of the subject matter of the case.

Charges for staying in social care centres are first of all incurred by the occupant staying there; then by his spouse, lineal descendants, ancestors, and then the municipality, which is entitled to demand refund of expenses incurred for this purpose. In the Act on social aid of the regulation, the legislator did not make an obligation to incur the charges for staying in the social care centre conditional on the existence of the maintenance obligation, invoking only the institution of marriage and the kinship relation. However, from complaints directed to the Human Rights Defender, a need to commute rigors of the so-formed obligation arises. The existing regulation does not allow the spouse and relatives to revoke the obligation to incur the charges in the situation in which the imposition thereof should not be taken into consideration on account of special circumstances (for example, the obligation concerns a person deprived of custody, using violence towards the family members, etc.). The articles lack that the spouse and lineal descendants before ancestors are under an obligation to incur the charges in case they are burdened with the maintenance obligation. In the opinion of the Human Rights Defender, it is necessary to introduce a regulation which will commute the applicable principles for financing by the spouse and the relatives costs of the stay of the family member in the social care centre. In response to the legislative intervention of the Human Rights Defender, the Minister of Labour and Social Policy informed that activities will be undertaken with the purpose of amending the Act on social aid. The Human Rights Defender will monitor progress of the legislative works in this matter.

### **C. Family rights protection**

The Human Rights Defender entered into proceedings before the Constitutional Tribunal on the constitutional complaint concerning the nursing benefit for the child. The Constitutional Tribunal adjudicated that making it impossible to grant the parent who resigned from gainful employment in conjunction with the necessity of taking care of the disabled child the right to the nursing benefit in the situation in which the right to the nursing benefit of the other parent is determined for another child in the family is at variance with the Constitution. The Constitutional Tribunal recognised

that the appealed solution is inconsistent with the regulation of the Constitution, that families in difficult financial and social situation, particularly families with many children and incomplete families, have the right to specific aid of public authorities. Families bringing up a disabled child, in particular if it is more than one such child, are certainly in a difficult social situation, and as a rule also in a difficult financial situation. By virtue of the Constitution, such families have the right to specific, namely above-standard, aid whose important instrument is the nursing benefit. An entity eligible thereto is a member of the family – the father, mother, or the actual guardian, but the beneficiary thereof is the whole family. This benefit is to be partial compensation of the income lost as a result of resignation from gainful employment. At the same time it is, importantly, connected with the continuance of social security – old-age and disability insurance – at the public expense (guardian's insurance premiums are paid from public funds). The Constitutional Tribunal recognised that in an extremely difficult situation of a family bringing up more than one disabled child, the resignation from work of one parent (guardian) can often turn out to be insufficient. For this reason, in such a situation the law should create the possibility for the other parent to resign from work, allowing him/her to also obtain the nursing benefit. The problem of implementation of the Constitutional Tribunal's position contained in the sentence in relation to the regulation of the right to nursing benefits will be monitored by the Human Rights Defender.

Conditions for acquiring the right to family benefits violate the principles of equality in law, depriving persons running a farm and taking care of disabled children the right to caring benefits. These persons, despite the stand taken by the government department of social policy, stating that running a farm does not constitute a negative premise to obtaining the right to the nursing benefit, are unable to claim their rights on account of a well-established line of rulings of the administrative courts. Other problems concerning the conditions for acquiring the right to family benefits require legislative initiative. The first issue concerned the definition of the lost income, contained in the Act on family benefits. This definition does not provide for the situation of sale of the farm as a premise for determining the actual family income. The second issue concerns the exclusion from the group of persons eligible to apply for the nursing benefit those whose right to a retirement pension, a disability pension, a family pension on account of death of their spouse granted in the case of concurrence of the right to a family disability pension and another old-age and disability benefit, a social disability pension, a permanent benefit, teachers' compensatory benefit, a pre-retirement benefit or a pre-retirement allowance is established. In the opinion of the Human Rights Defender, there exists a need to consider the possibility of introducing clear legal regulation which allows to select a more favourable benefit in the case of concurrence of the right to the nursing benefit and to the retirement pension and disability pension benefits to the Act on Family Benefits.

In the light of complaints received by the Human Rights Defender, a problem emerged with the right to allowance for the guardian of persons who take care of a spouse and who acquired the right to the nursing benefit before 1 July 2013 as a result of submission of a legal remedy against the decision of the first instance – the nursing benefit was granted by the local government appeals board or by the administrative court. Applicable articles of the Act on the determination and payment of carers' allowances raised significant concerns of adult carers of the disabled persons. In the opinion of those interested, persons taking care of the spouse whose right to the nursing benefit was granted by the appeal body before 1 July 2013 may have hindered access to the carer's allowance. The reason for such an actual state of affairs may be the fact that in accordance with the provisions of the Act on Family Benefits, in the wording applicable on 31 December 2012, the nursing benefit is not eligible in case a person who requires care remains in the state of matrimony. In the opinion of the Human Rights Defender, doubts arising in the situation in which the Constitutional Tribunal recognised that the restoration of the state which is in accordance with the Constitution requires the immediate intervention of the legislator may give rise to additional social tension in the environment of persons responsible for the disabled. The Human Rights Defender asked the Minister of Labour and Social Policy to take a stand in the matter and to consider the possibility of undertaking immediate activities to eliminate emerging vagueness. The case is being monitored by the Human Rights Defender.

The Human Rights Defender received many complaints on the unequal treatment of the disabled. The interested questioned the applicable legal solutions concerning an insufficient – in view of the needs of persons with disabilities – amount of benefits in the form of the nursing allowance and the social disability pension, the diversity of the amount of the nursing bonus and the nursing allowance, and also the absence of regulations which allow a pensioner to collect the social nursing bonus. In the opinion of the appellants, there is no justification for diversifying the aid directed to the disabled, and a person who had become unable to work as a result of a physical disability before entering the labour market should receive from the state aid at least at such a level as the person the disability of whom was given rise to on coming of age by such person. Clinching importance is given to the fact that a premise to acquire the right to the social disability pension is the complete inability to work on account of violation of physical fitness, namely a circumstance which may be acknowledged as a functional equivalent of the inability to work because of illness or disability, entitling the disability pension on this account.

The problem of the diverse amount of nursing allowance and nursing bonus was presented to the Senate to consider the possibility of undertaking an adequate legislative initiative. The Family and Senior Policy Committee of the Senate decided to make an attempt to prepare proposals whose purpose would have been to

rationalise the state expenses for the payment of the nursing allowance and the nursing bonus, as well as to standardize both their amounts and the rights to receive them. The case remains in the scope of the Human Rights Defender's interest.

Financial support to live away from the place of residence of children staying in a family-type care and nurturing institution - a foster family and family children's home - was only limited to children aged from 6 to 18. In the opinion of the Human Rights Defender, the adopted solution harms the constitutionally-guaranteed principle of equality. It is necessary to undertake a legislative initiative whose purpose is to effectively protect the rights of children staying under the family-type alternative care. The Ministry of Labour and Social Policy announced that it will undertake activities to eliminate limitations in obtaining the financial support by all children staying in the family-type care and nurturing institutions. Progress in the field of legislative works is monitored by the Human Rights Defender.

## **D. Protection of the rights of soldiers and public services officers**

The Constitutional Tribunal examined the Human Rights Defender's application concerning constitutionality of provisions of the Regulation on the detailed conditions of increasing retirement pensions of Police, Internal Security Agency, Intelligence Agency, Counter-Intelligence Military Service, Intelligence Military Service, Central Anti-Corruption Bureau, Border Guard, Government Protection Bureau, State Fire Service and Prison Service officers. The constitutional problem in this case came down to the question of whether limiting one of the premises of increasing the retirement pension to the situation of a "direct" threat to the life or health in the Regulation by the Council of Ministers, in the legal state in which the Act authorising to the issuing of this Regulation, only determines conditions "posing a particular threat to life and health," which is an unconstitutional violation of the authorisation to issue the executive act. The Constitutional Tribunal stated that the introduction of a criterion of "directness" in the Regulation led to narrowing down the statutory requirement of increasing the retirement pension. In accordance with this sentence, the questioned regulation becomes invalid insofar as it imposes on the officer the necessity to demonstrate periods of service in conditions posing a "direct" threat to life and health.

The Human Rights Defender questioned the consistency of certain regulations of the Act with the Constitution on the Police force, on the Border Guard, on the Internal Security Agency and Intelligence Agency, on the Central Anti-Corruption Bureau, on the Counter-Intelligence Military Service and on the Intelligence Military Service and on the Customs Service officers. The right to safe and hygienic conditions of work is a constitutional right. The method in which this right is implemented, as

well as the obligations of the employer, should be determined in the Act. The right to safe and hygienic conditions is determined in none of the official labour regulations which were questioned in the application. Therefore, neither the obligations of the employer, nor the manner in which this right is implemented is determined. Police force and Border Guard Chiefs are only authorised by the Acts on the Police force and on Border Guards to determine detailed conditions of the health and safety of the service by way of orders. Issues of occupational health and safety are omitted by the Act on Government Protection Bureau. Official labour regulations of officers of the Internal Security Agency, Intelligence Agency, Central Anti-Corruption Bureau, Customs Services, Counter-Intelligence Military Service and Intelligence Military Intelligence in the content thereof do not implement the obligation of the statutory regulation of the constitutional right to safe and hygienic conditions at work. The legislator sub-delegated the obligation resulting from the Constitution to the Prime Minister, to the Minister of National Defence and to the minister competent for public finances. The result of handing over this obligation to the executive authority without determining in the Act the manner in which this right is implemented and the obligations of the employer, is the formal character of the statutory authorisations. The matter awaits the Constitutional Tribunal for the examination date to be determined.

The Human Rights Defender received complaints concerning identical physical fitness tests for women and men in the recruitment process of the Police force, not taking into consideration the biological differences between them. The provisions of the Regulation of the Minister of Internal Affairs on the qualification proceedings of the Police force raise objections from the point of view of the provisions of the Constitution. They limit the right of access for female candidates for the Police force on equal principles in a disproportionate manner and violate the right to the equal treatment in employment. Furthermore, the limitation discussed, contrary to the constitutional requirements, took the form of an executive act. The justification of ostensibly equalising the criteria of physical efficiency with specific availability or the specificity of service in the Police force also raises doubts from the point of view of regulations of the Act on the implementation of certain provisions of the European Union in the field of equal treatment (the so-called indirect discrimination). Both in the Police force and in other formations subordinated to the Minister of Internal Affairs, particularly in the State Fire Service and in the Government Protection Bureau, there are positions on which officers are required to have higher-than-average physical fitness. In such cases, it is the specific character of official activities being undertaken which should determine special physical requirements, identical for both males and females. Procedures in terms of appointing candidates for such positions should be preceded by an internal physical fitness examination. The Human Rights Defender asked the Minister of Internal Affairs to take a stand on the matter, and to



possibly consider the possibility of amending the Regulation to change the state of affairs described. The Minister indicated that the need for such a regulation, being indeed of a specialised character, is a result of the internal needs of the Police force, and is particularly intended to be adopted for service people (women and men) who would be able to perform the profession of a policeman in a manner which ensures safety to the citizens, but also to themselves. The determination of diversified criteria would thus remain in conflict with the character of the subject matter of the regulation. Arguments for the rightness of the solutions adopted in the Police force, referring to the qualification proceedings, which also obtained the approval of the Supreme Audit Office, are directly related to the necessity to ensure an adequate level of safety and public order. The matter remains in the Human Rights Defender's interest.



# THE MOST IMPORTANT ISSUES IN THE FIELD OF CIVIL LAW

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## A. Right to good legislation

In 2014 the course of legislative works in matters signalled to the competent authorities of the state in previous years was still being monitored. Works in the following fields were initiated and continued: change in the system of support and care over legally (also partially) incapacitated persons, changes within the enforcement proceedings whose purpose is to increase the guarantee of protection of rights of the debtor and of the third parties in the enforcement proceedings and the possibility to determine the amount of enforcement fees, the status of evidence from family diagnostic and consultation centre opinions in other proceedings (especially in divorce and care proceedings) than those conducted based on the Act on Proceedings in Cases Involving Juveniles, the cooperative law, particularly the residential cooperative, and the protection of occupants' rights. Addressees of Human Rights Defender's interventions agreed with the demands of changes proposed by the Human Rights Defender. Appropriate works were undertaken, but the slow pace thereof is alarming, arising anxiety that they will not be completed by the time the present term of office of the Sejm of the Republic of Poland expires. The Human Rights Defender indicated consecutive examples of the poor quality of law, which raises numerous doubts over the interpretation thereof in the application process and discrepancies in the case-law of the courts and of administration bodies (distance of parking lots from buildings, the method of voting on the co-owners of the flats in the housing cooperative, the principles of counting the votes at the General Meeting of the housing cooperative, the scope of activities to which the cooperative is entitled as an administrator of the shared fixed property).

## B. Right to court in civil proceedings

The Human Rights Defender has been signalling to the Minister of Justice problems related to the efficient delivery of court parcels since 1 January 2014, after the common judiciary concluded the contract with the new postal operator. The Human Rights Defender stressed that the proper delivery of the court parcels bears direct relation to the constitutionally-protected right to court; and any irregularities in this respect harm the sphere of constitutional rights of the citizens.

Also, the Human Rights Defender undertook to analyse the problem related to bringing actions by the prosecutorial service in cases involving a child's origin. More and more often, men who consider themselves fathers, but who are unable to prove this fact since in the light of the law a different man has already been acknowledged to be the father of the child, are applying to the Human Rights Defender. Such men are not entitled to their own legitimisation to bring an action. By and large, the only way to determine a child's origin is to bring suitable action by the prosecutor. It is thus necessary to provide equal standards to examine these type of cases by the public prosecutor's office with all the due thoroughness and versatility. The right of the alleged father to determine family bonds is an element of the right to privacy, protected by both the Constitution and international agreements.

Furthermore, the Human Rights Defender paid attention to the problem of no access in certain penitentiary units to the civil proceedings records being conducted in an electronic form. From the complaints being brought in, it appears that sometimes IT systems which function in courts are incompatible with those available in the penitentiary units, which makes it impossible for the prisoners to become familiar with the records of the proceedings being conducted in their case, and therefore it violates their constitutional right to court. The problem can grow together with ongoing computerisation. Currently, it particularly concerns those situations in which essential documents are prepared only in an electronic form (electronic meeting protocols) or when the proceedings records is only in such a form (cases which are examined in the so-called e-court).

### **C. Costs of civil proceedings**

The Human Rights Defender signalled to the Minister of Justice her doubts on whether the applicable civil procedure regulations concerning the exemption from the judicial costs or the designation of a court-appointed lawyer in a sufficient manner protect the privacy of persons applying for such assistance. The Human Rights Defender also paid attention to issues related to the judicial costs in a civil trial. The arguments of the Human Rights Defender concerning the amount of the judicial charge for an appeal to the court against the adjudication of the National Appeal Chamber in the public contract-awarding procedure resulted in the sentence of the Constitutional Tribunal stating the unconstitutionality of the applicable regulations. The Court recognised that placing the maximum charge at a level of PLN 5,000,000 is disproportionate. This regulation excessively interferes with the constitutionally-guaranteed right to court, violating both the right to access to court and the right to appeal rulings and decisions issued in the first instance. It also determines excessive and disproportionate conditions for putting forward a legal remedy. The problem of

absence of a legal regulation was also continued, which would make it possible to exempt the poorest persons from mediation costs for civil proceedings on principles analogous as in the case of exemption from judicial costs. In the opinion of the Human Rights Defender, the institution of mediation is improperly appreciated and promoted in Poland, although mediation really disburdens courts in adjudicating disputes and allows it to precipitate the court proceedings – which is indicated by experience of other countries.

## **D. Family rights protection**

Legislative works were still monitored by the Human Rights Defender concerning the legal regulation of the status of the evidence from the family diagnostic and consultation centre opinion in other family cases than those conducted based on the Act on proceedings in cases involving juveniles. The Human Rights Defender entered into correspondence with the General Prosecutor concerning explanatory proceedings conducted by the public prosecutor's office units in cases concerning bringing an action to determine a child's origin. In situations in which the interested may not initiate judicial proceedings independently, a suitable action may be brought by the Prosecutor. The absence of clear, predictable rules in the course of the prosecutor assessing such applications may violate human rights.

The Human Rights Defender also drew the Minister for Justice's attention to the need to explicitly regulate in the civil procedure principles for using evidence from the DNA genetic code testing. This evidence is becoming more and more practically significant, particularly in cases concerning the determination of a child's origin. Furthermore, the Human Rights Defender indicated that as a consequence of the absence of regulation of the principles for performing DNA testing by specialised companies, there are companies which perform such testing on a commercial basis. No legal articles, nor universally-applicable codes of good practice, exist regulating the methodology, responsibility or simply the admissibility of contract DNA testing. Meanwhile, the structure of the genetic code should be acknowledged to be personal data which are "sensitive data," and it should be subject to specific protection against unauthorised processing. In the opinion of the Human Rights Defender, these issues require to be urgently regulated with the provisions of the statutory rank.

## E. Protection of housing rights of citizens

Activities were still undertaken signalling the absence of analogous regulations as in the bailiff's execution, regulated by the provisions of the Code of Civil Procedure, in protection against the so-called "eviction" in the case the flat is vacated in the mode of administrative execution. In the opinion of the Human Rights Defender, it is necessary to introduce to the Act on executive proceedings in administration general regulation which makes it impossible to vacate a flat without guaranteeing any shelter to the persons being evicted. This subject has been the subject matter of the Human Rights Defender's activities for years, yet the expected regulations have not been passed so far.

In 2014, doubts about the legal admissibility to transfer the ownership of the flat built with the participation of funds coming from the credit given by Bank Gospodarstwa Krajowego from the funds of the National Housing Fund to persons having the cooperative association right to such flats were also not eliminated. Subsequent judicial rulings, also of the Supreme Court, confirmed the legitimacy of the doubts signalled by the Human Rights Defender in this respect. The Minister for Infrastructure and Development agreed with the Human Rights Defender's opinion that the elimination of existing doubts, as far as acceptability to buy out such flats is concerned, requires statutory changes. However, an ultimately adequate project of changes in the regulations was prepared by the Senate of the Republic of Poland, and not by the government.

The idleness of the government in the sphere of the housing policy aroused the Human Rights Defender's anxiety, particularly in the development of a coherent system of supporting the poorest citizens (those who are not creditworthy, who cannot purchase a flat, or take advantage of the TBS offer) in the fulfilment of their housing needs. In an intervention to the Prime Minister, the Human Rights Defender paid attention to the fact that works on a complex amendment of the Act on the protection of the rights of tenants have been stopped from 2012. The Human Rights Defender expressed an opinion that currently, after almost 15 years, it is necessary to change this Act, with which, as a matter of fact, addressees of the Human Rights Defender's interventions agreed in previous years. The Human Rights Defender signalled to the Minister of Infrastructure the need to remove from the Act the regulation which imposes on the communes an obligation to determine, in the resolution concerning principles for renting the flats included in the mina housing resource, the standards relating to flats whose total surface area is more than 80 square metres. In the current legal state, such flats do not have the special legal status anymore and general renting principles are applied to them. The Human Rights Defender furthermore asked the Minister of Infrastructure and the Minister of Justice to present their assessment as far as the functioning of the regulations changed in

2011, on the eviction to temporary rooms, is concerned. In the opinion of the Human Rights Defender, applicable regulations, contrary to intentions expressed in the Constitutional Tribunal rulings and to the intentions of the legislator, can in practice give rise to the phenomenon of homelessness. In another letter to the Minister of Infrastructure and Development, the Human Rights Defender paid attention to the absence of sufficient regulation of the scope of administration exercised by the housing cooperative, which in practice had an effect on the divergent positions of the Supreme Court and of the Supreme Administrative Court as far as the type of activities which may be independently undertaken by the cooperative without the need to obtain the consent of flat owners is concerned. The Human Rights Defender raised the problem of vague regulations, which determines the principles for counting votes when passing resolutions by the general meeting of the housing cooperative. Also, the Human Rights Defender addressed an extensive intervention to the Minister of Infrastructure presenting numerous problems, which had already been reported earlier, related to vague articles of the Housing Cooperative Act and signalling the absence of response to the rulings of the Constitutional Tribunal. It concerned, *inter alia*, the determination of the principles for accounting for housing contributions, the determination of the financial principles for transferring the ownership to tenants of former company flats, the obligation to sell each vacated (in the legal sense) flat in the tender procedure for the determination of the ownership, or the problem with trading the cooperative privately-owned rights to flats. Unfortunately, these problems still remain unsolved.

The Human Rights Defender also raised the matter of difficulties in the implementation in practice of the right to vote on the housing cooperative resolutions by co-owners, in particular when such a place is a multi-workstation garage hall. In 2014, the Human Rights Defender returned to the problem of the legal situation of tenants of former company flats, which were sold years ago for the benefit of other entities as a result of the absence of explicit legal regulations. Currently, the situation of these tenants is very difficult – they may not buy out the flats and do not have a sense of stabilisation with regards to their housing situation. It evokes a tremendous sense of social injustice because, *inter alia*, as a result of the Human Rights Defender's activities, regulations which give the company flats tenants priority in the purchase thereof have been in force since 2000. Unfortunately, persons whose flats had already been sold earlier may not take advantage of these regulations. Despite the fact that the present and difficult situation of these persons was caused by long years' delay of the state in proper regulation of the issue of sale of this special category of flats, the problem still remains unresolved. On account of the fact that works in the Sejm were set in motion on the draft of the Act concerning this issue, the Human Rights Defender asked the Speaker of the Sejm to undertake all activities which enable to finalise these works before the term of office of the Sejm expires.

## F. Rights of members of housing cooperatives

Human Rights Defender's activity concentrated to a large extent on the issues of protection of the rights of owners of the fixed properties, who experience various types of limitations on account of the implementation of the public objectives. The Human Rights Defender undertook activities in cases in which he noticed the absence of balance between the protection of the rights of owners, and the need to protect the public interest. The Constitutional Tribunal confirmed the fact of violation of the constitutional rights of owners of the fixed properties which were "frozen" for investments by former spatial development plans, reserving the grounds for public objectives which were not implemented. In the current legal condition, the right to compensation (money compensation or the demand to buy out the fixed property) is only granted in the case that a new spatial development plan is passed, which changes the previous purpose of the fixed property. Therefore if the given grounds were "frozen for investment" many years ago, for example for the expansion of roads, and such purposes have not been so far implemented, the owner may not take advantage of such fixed property (the so-called planning reserve remains on such fixed property), and also on this account, the owner is not given any compensation. The Human Rights Defender's application in this case was taken into consideration by the Constitutional Tribunal, which also issued the signalling resolution. Therefore, the legislator was obliged to legally regulate the issues of compensation for the indicated group of owners of the fixed properties.

The Human Rights Defender entered proceedings before the Constitutional Tribunal on the constitutional complaint concerning the limitation of the right to return the expropriated fixed property. In the opinion of the Human Rights Defender, making the possibility to demand the return of the expropriated fixed property conditional on the consent of all co-owners, and therefore the absence of the possibility to return the share in common law, is at variance with the Constitution. The case remains in progress.

The Human Rights Defender continued activities in the absence of the applicable articles of regulation which imposes the obligation to immediately inform the fixed property owner of entering thereof into the commune register of monuments. Entry into the register causes a far-reaching limitation of the ownership. Unfortunately, the Human Rights Defender did not receive answers to his/her interventions to the Minister of Culture and National Heritage and was forced to present the case to the Prime Minister.

The Human Rights Defender drew the Minister for the Environment's attention to the problem of limitation of the rights of owners of the fixed properties as a result of seizure of the fixed properties for mining purposes. Entrepreneurs obtain the possibility to seize other people's fixed property for mining purposes in the mode of



the so-called security of the action already in the course of the civil trial, and the owner may not receive remuneration for taking advantage of his/her fixed property until the trial has ended. In the opinion of the Human Rights Defender, it is necessary to change articles which will provide the fixed property owner with, for instance, partial compensation for the damage that he suffered as a result of seizure of the fixed property in the course of the civil trial.

The Human Rights Defender indicated to the Minister of Administration and Digitization the problem related to the lengthiness of examination by the National Commission for Granting Property Rights of appeals against Voivodeships' decisions on the municipalisation of the property. The lengthy duration of such proceedings, whose subject matter is the regulation of the legal status of the fixed property, have influence on the situation of many different groups of citizens (former owners of the ground, tenants of flats, etc.), which often makes it impossible for them to take advantage of rights granted by law, particularly in the case that such rights are of a temporary character.

The Human Rights Defender also paid attention to the violations of the rights of owners of the fixed properties, which are expropriated for the construction of the roads pursuant to the so-called special road act. There are considerable delays of the Voivodeships in issuing decisions granting the compensation to which the Human Rights Defender paid attention earlier, and which is now confirmed by the Supreme Audit Office. The Human Rights Defender asked competent Ministers to undertake activities to eliminate the delays. The matter remains in the Human Rights Defender's interest.

In 2014, activities were also undertaken for the protection of other property rights. The Human Rights Defender questioned the groundless, in his opinion, diversity of the protection level of entities authorised by copyrights towards users who violated these rights out of their own fault. The Human Rights Defender questioned the constitutionality of the solution which grants the copyright entities the right to demand payment three times the remuneration due to the authorised person on account of the consent to use the work. The scope of such a legal claim bears no relation with the size of the damage suffered, and it does not enable the court to determine the amount of the compensation. In practice, it can lead to the groundless enriching of the authorised persons, on account of the copyrights, to the detriment of users of these rights. Thus, the Human Rights Defender entered proceedings before the Constitutional Tribunal on the constitutional complaint concerning the regulation of the Copyright regulating this claim.

The Constitutional Tribunal took into consideration the Human Rights Defender's application questioning the constitutionality of regulations limiting the possibility to transfer the right to a forest equivalent to the purchaser of a plot on which forest cultivation is conducted only to cases of sale of the fixed property by

way of selling or inheriting. Such a solution made it impossible to transfer the right to the equivalent in the case that the ownership of the plot of land is transferred by way of deed of gift or by way of contract of perpetual use, which are main methods of trading land in rural conditions. The Court agreed with the Human Rights Defender's position that such limitation is at variance with the principle of equal protection of the property rights.

Furthermore, issues related to the protection of the property rights, such as the following, remained in the subject matter of the Human Rights Defender's activities: excessive severity of legislative charges determined towards persons committing illegal construction work, the absence of the fixed properties management of the definition of "monthly income" in the Act, entitling a discount on the annual charge on account of perpetual usufruct of the fixed property, the problem of a statutory definition of the notion of "individual farmer," which has a direct impact on the possibility to take advantage of the pre-emption right to fixed properties of the Agricultural Property Agency by the lessee or on the right to buy out agricultural fixed properties.

The Human Rights Defender again reminded the Minister of Justice of her interventions from previous years concerning various problems in the field of the judicial enforcement, which have not been solved so far. They include, *inter alia*, the amount of enforcement charges and the possibility to determine thereof, the protection of the debtor in the case of enforcement from the bank account and the protection of a debtor's spouse in the case of enforcement from the shared bank account.

## G. Environmental protection

Numerous complaints directed to the Human Rights Defender concerned problems related to the environmental protection and proceedings in progress, often related to private or public infrastructural investment projects being conducted. In the opinion of the Human Rights Defender, currently applicable articles on account of the absence of precise technical standards, do not provide sufficient protection of the rights of persons being in the circle of impact of a given investment project, specified facilities or devices. This problem emerges, *inter alia*, at locations of wind power plants, particularly of greater power to which for example bans on situating residential houses in the neighbourhood thereof do not apply. The absence of the technical standards, however is also an inconvenience in such cases as, for example, placing aggressive light advertisements near persons' flats, and even on the road lane or in the neighbourhood thereof. Despite the fact that these issues have been reported to competent authorities for several years, including in 2014 to the Prime Minister, they have not been regulated so far.

The Human Rights Defender applied to the Minister of Agriculture and Rural Development on a ban on leisure fishing on waters managed by directors of regional boards for water management [PL RZGW]. As a result of the negative assessment by the Supreme Audit Office, the actual ban on leisure fishing on waters managed by the directors was introduced, which violates the universal right to take advantage of public inland waters resulting from the Water Law. The Minister explained that the signalled problem may only be solved as a result of an urgent amendment of the regulations. In conjunction with that, the Human Rights Defender applied to the Chairman of the Special Subcommittee for the Preparation of Proposals of Changes to the Inland Fishing Act, requesting to consider an appropriate amendment as part the legislative works being conducted. The case remains in progress.

The subject matter of Human Rights Defender's intervention to the Minister of the Environment was the problem of waste management, including hazardous waste. Among the raised problems there is building plants, also in neighbourhoods of residential areas, where such waste is processed. The citizens paid attention to concerns related to the influence of operation of these plants on their health and life. At the same time, they often indicated the ineffectiveness of activities on the protection against harmful emissions, which are undertaken by the environmental protection authorities. The problem with the costs of utilisation of hazardous waste in the absence of the owner thereof was also noted. The problem also emerged with the imposition of administrative fines for transboundary shipment of waste which were disproportionate to the weight of the committed violation. The matter remains in Human Rights Defender's interest.



# THE MOST IMPORTANT ISSUES IN THE FIELD OF ADMINISTRATIVE AND ECONOMIC LAW AND IN OTHER FIELDS OF LAW

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## A. Right to good legislation

The Human Rights Defender was in doubt about the constitutional nature regarding the authorisation of the Minister of Health to announce the criteria and the manner for stating permanent irremediable cessation of brain functions by way of a declaration. At the same time, the Defender paid attention to the fact, that the declaration is not a form of the act of the universally applicable law provided for by the Constitution, and it should not contain regulations determining the procedure for stating the death of the brain. The Human Rights Defender acknowledged the clarifications sent by the Minister to be insufficient and since the procedure for stating the death of the brain was omitted in the clarifications sent, he asked again to address the issue of having it in the declaration. The case remains in the field of interest of the Human Rights Defender.

The Human Rights Defender drew the Minister for Health's attention to the problem that the order of the President of the National Health Fund, which examines conditional complaints submitted in an electronic form and without an electronic signature on the confirmation of submission of the complaint in writing, was inconsistent with the law. A matter of citizens' rights being regulated by a management by law also seems to be questionable in constitutional terms. In response, the Minister informed of the removal of the regulation from the questioned order, which obliges the confirmation of the electronically-submitted complaint. In all other aspects, the Minister did not agree with Human Rights Defender's doubts. The case remains in progress.

The Human Rights Defender applied to the Minister of the Environment on the constitutionality of regulation of the Geological and Mining Law, which limits the possibility to state invalidity of the concession decision, which *ex lege* recognises the beginning of the activity covered by the concession to be an irreversible legal effect. However, possible resumption of the administrative proceedings was only limited to the end of the first year since the activity covered by the concession started. The Minister for the Environment did not agree with the Human Rights Defender's position. The matter remains in the Human Rights Defender's interest.

In the intervention to the Chief National Geodesist, the Human Rights Defender raised the problem of evading voivodeship inspectors for geodetic and cartographic

supervision conducting supervising activities over their own tasks performed by the communes based on the Act on the geodetic and geological law within the scope of determination of the serial numbering of the fixed properties. The Human Rights Defender is still awaiting an answer.

The Constitutional Tribunal examined the Human Rights Defender's application to determine that the order of the Minister of Treasury on principles and the mode of selection of candidates for the composition of supervisory boards of commercial companies with the share of the Treasury and supervisory boards of other legal entities controlled by the Minister of Treasury is at variance with the Constitution. The Court acknowledged the order to be consistent with the Constitution.

## **B. Protection of consumer rights**

The Human Rights Defender applied to the President of the Polish Bank Association on the situation of elderly people on the market of bank services paying attention to the improper practice of banks, which refuse to provide banking services to individuals who use identity cards issued for an indefinite period of time despite the fact that such a document is consistent with the applicable law. The President of the Polish Bank Association indicated that irregularities were a result of technical reasons and, in accordance with the knowledge possessed by the Polish Bank Association, they were eliminated by introducing relevant changes in the IT systems.

The Human Rights Defender addressed an intervention to the Minister of Economy on free-of-charge access to information stored by the Economic Information Bureaus, signalling problems which people, in particular elderly persons, confront when they want to obtain free access to information concerning them. The manner in which the Bureau works is that it determines the free-of-charge access to information concerning debtors who are consumers, which takes place once every six (6) months. The Minister did not agree with the Human Rights Defender's position, stating that the regulation of the Act on the access to business information and to the exchange of business information may be interpreted also in a manner that both ways of accessing the information (in the registered office of the Bureau and electronically) are free-of-charge. On the other hand, in the case of a correspondence form, it is acceptable for the administrator to collect a charge covering the costs of printing and mailing. The Human Rights Defender ended the proceedings on account of the depletion of legal means of action.

In conjunction with numerous complaints related to the introduction by the operator of additional security features in the BDI service (Free Access to the Internet), the Human Rights Defender's doubts were raised by difficulties related to it for persons with visual problems. The Human Rights Defender signalled this problem

to the President of the Office of Electronic Communication, who informed that the introduced security features were modified and are clearer and easier to use. However, for persons who, despite the introduced facilities, are unable to resolve the problem the possibility of removing the security features has been introduced (it requires having a disability certificate). The Human Rights Defender ended proceedings on account of the depletion of legal means of action.

The Human Rights Defender applied to the President of the Polish Bank Association, the Financial Supervisory Commission, the Minister of Finance and to the National Council of Judicial officers on the principles for conducting administrative execution from the bank account, raising that the banks block debtor's bank accounts up to the amount being enforced, even if sufficient funds to cover the financial obligation are found on one bank account obligations. All of the debtor's bank accounts are not automatically unblocked after the claimed amount has been transferred to the enforcement authority, and it can even last up to one month, and the person obliged (the debtor) is deprived of the possibility to use the blocked funds throughout the whole period. It results from the received clarifications that a proposal was put forward to add in the draft of the Act on change of the Banking Law Act regulation which enables the Financial Supervision Authority (pol. UKNF) to examine the correctness of implementation of the seizures of cash debts. The Human Rights Defender expects the introduction of the announced changes.

In an intervention to the Minister of Infrastructure and Development, the Human Rights Defender paid attention to the problem of people using the public railway transport, in which a particular railway company does not recognise season tickets issued by other companies. The Minister agreed with the Human Rights Defender's opinion on the necessity to form legal frameworks for recognising season tickets issued by other railway companies. However, the Minister indicated that currently the Ministry cannot present proposals of legislative changes because consultations with railway companies are held on the subject of formal and legal hindrances which make it difficult to introduce tariff integration. The case remains in progress.

## **C. Taxes and public levies**

The Human Rights Defender applied to the Minister of Finance on doubts over a form of the document required to collect the reimbursement of tax overpayment, stressing that this issue concerns in particular elderly persons and the disabled who, due to their health condition or physical abilities, cannot collect the reimbursement from the office in person. Such persons often do not have a bank account, and the reimbursement in the form of a postal order requires incurring additional costs. One

of the possibilities to collect the cash reimbursement at the cash desk is to give power of attorney for collection, but articles of the General Tax Code do not regulate the procedure of giving power of attorney for the collection of the overpayment's reimbursement, and authorities treat the form in which the taxpayer should give the power of attorney in different manners. The Minister took a stand that the overpayment's reimbursement is material and technical activity, being a consequence of the created overpayment, and given that it is not undertaken as part of the tax proceedings procedure or of the verification activities. In conjunction with that, when giving the power of attorney for the collection of the overpayment, the regulations of the Civil Code apply, and not those of the General Tax Code. The case is monitored by the Human Rights Defender.

The Constitutional Tribunal examined the Human Rights Defender's application on the inconsistency of regulation of the Tax Ordinance Act concerning the so-called "tacit" tax interpretation with the Constitution. The Court did not agree with the Human Rights Defender's position. At the same time, the Court judges unanimously decided to submit signalling to the Sejm of the Republic of Poland, in which the necessity to regulate the issue of informing the taxpayers of the fact of issuing – within three (3) months from when the application is received – individual tax interpretation, and of the fact whether it is positive or negative, was indicated.

The Human Rights Defender put forward an application to the Constitutional Tribunal on the tax allowance because the amount determined in the Act on the natural person income tax decreasing the income tax in the first bracket of the tax scale violates the principles of justice and the obligation to bear public burdens and benefits, including taxes. The Human Rights Defender is awaiting for the Constitutional Tribunal to examine the application (file ref. No. K 21/14).

The Human Rights Defender signalled to the Minister of Finance the difficulties in taking advantage of the so-called pro-family deduction in the case that children completed education during the tax year. The reason for such a state is the wording of the regulations, which do not provide for an adequate mechanism, for example, for the proportional calculation of the income limit. The Human Rights Defender asked to consider legislative changes which will guarantee respect for constitutional principles, including, above all, the principle of protection of trust to the state and to the law constituted by that state. In the opinion of the Minister, applicable regulations do not require initiating legislative changes and do not violate the Constitution. The case remains in the scope of the Human Rights Defender's interest.

The Human Rights Defender applied to the Minister of Finance on the preferential settlement of income by a person remaining in the state of matrimony in the case that a legally-valid sentence stating that her spouse is not a father of the child born during the term of the marriage is pronounced. The Minister expressed a view that such a person can take advantage of the preferential settlement of income



if she is a single mother in the tax year, and at the same time satisfies other conditions entitling her to take advantage of the settlement. The Minister changed his position on this matter and handed over the issuing of the interpretations of the new guidelines to the authorised bodies. The previously-issued interpretations in this respect were verified by the Minister of Finance.

The Supreme Administrative Court examined the Human Rights Defender's application concerning the adjudication of the legal issue of whether income from the paid sale of fixed properties, or parts thereof, or the share in the fixed property, which are used for purposes related to business activity, which were not included in the register of fixed and intangible assets, and which are not the elements of the property, is income from business activity, as defined by regulations of the Natural Person Income Act. In the opinion of the Human Rights Defender, the paid sale of the fixed properties, or parts thereof, or the share in the fixed property, which are used for purposes related to business activity, and which were not included in the register of fixed and intangible assets (and which are not the elements of the property indicated in this Act), is not income from business activity. The Supreme Administrative Court passed a resolution in which it concurred with the Human Rights Defender's position.

The Human Rights Defender applied to the Prime Minister, to the Minister of Administration and Digitization and to the Minister of Culture and National Heritage, on a number of issues concerning radio and television licence fees, including, *inter alia*, granting an individual identification number by Poczta Polska for radio and television users, citizens' problems in obtaining exemption from the fees, lengthiness in examining applications for remitting or distributing the radio and television licence fee arrears into instalments, and also referring to the need to consider withholding or suspending, in certain cases, enforcement activities concerning these arrears. Correspondence with the Minister of Culture and National Heritage also concerned the present state of works on the Audiovisual Fee Act. The issue remains to be the subject matter of the Human Rights Defender's activities.

The Human Rights Defender put forward an application to the Constitutional Tribunal to determine the inconsistency of regulations of the Act on executive proceedings in administration insofar as they do not determine the maximum amount of the enforcement fee and of the handling fee with the Constitution. In the opinion of the Human Rights Defender, the structure applied by the legislator for determining the amount of the enforcement fees and the handling fee violates the constitutional standards. The Human Rights Defender is awaiting for the date of the trial before the Court to be determined.

## D. Business activity

In an intervention to the Minister of Finance, the Human Rights Defender indicated tax impediments related to registering business activity under the address of the so-called virtual office. In the opinion of the Human Rights Defender, at the stage of assigning Number of the Tax Identification (TIN), the tax authorities should not examine whether the place indicated by the taxpayer has a real possibility of conducting a certain type of activity in it. In accordance with applicable regulations, the proceedings should be limited to the examination of completeness and the form of the identification application. The Minister did not agree with the Human Rights Defender's view. The matter remains in the Human Rights Defender's interest.

In an intervention to the Minister of Health concerning the conducting of unannounced inspection or control of the business activity to which a permission was issued pursuant to the Pharmaceutical legislation, the Human Rights Defender indicated that the regulation discussed excludes the general obligation to notify the entrepreneur of the intention to initiate inspection, resulting from the Business Activities Freedom Act, which makes it difficult to verify the legitimacy of initiation of the inspection without prior delivery of notification of the intention to initiate it. In the opinion of the Minister of Health, the current legal status enables pharmaceutical inspection bodies to duly perform their statutory tasks and ensures the protection of the public interest. The case is in progress.

## E. Health care system

The Human Rights Defender applied to the Minister for Health and to the Prime Minister on the delay in the implementation of the Directive of the European Parliament and the Council 2011/24/EU on the application of patients' rights in cross-border healthcare. Its deadline for implementation expired as of 25 October 2013. On 10 October 2014, the Sejm passed an Act on the change of the Act on healthcare services, financed from public funds and certain other acts, based on which the directive was implemented.

In an intervention to the Minister of Health, the Human Rights Defender indicated the impediments in accessing healthcare services financed from public funds by ensuring universal access to cataract treatment. Furthermore, the Human Rights Defender asked for information on the undertaken and anticipated activities in this respect, and also in a broader aspect concerning the popularisation of access to other healthcare services. The Minister for Health informed the Human Rights Defender of activities being undertaken to improve the situation.

In conjunction with the fact that new legal regulations entered into force as regards the time of work of certain medical employees, in an intervention to the Minister of Health, the Human Rights Defender indicated that the time of work of employees who were taking advantage of short-time working schemes to date will lengthen. The legislator did not provide for mechanisms protecting an appropriate increase in these employees' remuneration when introducing such a legal change. These employees' possibilities to claim an increase in their remuneration are limited, which may give rise to conflicts. The Minister informed the Human Rights Defender that he does not see basis to undertake works towards changing of the structure of the regulations levelling the time of work of persons performing a medical profession in healthcare institutions. The matter will be monitored by the Human Rights Defender.

Regarding primary health care doctors' low interest in the training offer in the field of geriatric care, the Human Rights Defender applied to the President of the Superior Medical Council. In response, the President assured that the medical environment, like the Human Rights Defender, expresses care for senior patients. After the request from the Human Rights Defender to distribute the information had been received, the Superior Medical Council placed a link to a training course on the website thereof.

The Human Rights Defender asked the Minister of Health to undertake activities to provide children with health safety, including actual continuity of medical care after a new-born baby has left the healthcare institution. The Minister of Health informed the Human Rights Defender that, in his opinion, applicable regulations provide health safety to new-born babies after they have left the healthcare institution. The Minister has developed a guide for pregnant women, which contains instructions concerning care over a child in an initial period after it was born. The matter will be monitored by the Human Rights Defender.

In 2014, the case of violation of the general principle of fourteen-day period of *vacatio legis* between publishing and implementing the list of refunded drugs, special-purpose foodstuffs and medical products by the Minister of Health was continued. In response to the Human Rights Defender's intervention, the Minister declared that in his opinion, the Act on promulgation of normative acts and certain other legal acts does not apply to the declaration, and therefore the concerned list does not have to be published at least two weeks before it comes into effect. Furthermore, the Minister stated that since the refund declarations are announced every two (2) months, the Minister's statutory obligation to publish them fourteen (14) days before the date on which the list of refunded drugs comes into effect is impossible to implement from the purposeful and practical point of view. The case remains in progress.

The Human Rights Defender applied to the Minister of Health on the preparation of the national Alzheimer's plan, indicating that in 2009 the European Parliament

passed a declaration to make Alzheimer's disease a priority of the health policy in EU countries, recommending the preparation of the national Alzheimer's plans and of the European Action Plan. The Polish government did not even present the assumptions of such a plan. It is necessary to develop relevant institutional and legal framework for the care of persons afflicted by Alzheimer's disease at the central level. The Minister informed the Human Rights Defender that it is planned to begin work to develop new methods on the manner of diagnosing dementia. The National Health Fund (pol. NFZ), as well as experts in selected disciplines of medicine, will be engaged in these works. This process will be monitored by the Human Rights Defender.

The Human Rights Defender applied to the Minister of Health, and then to the Chairman of the Health Committee of the Sejm of the Republic of Poland, on the absence of a legal standard from which a hospital obligation would result in providing patients with accommodation and food, and asked to consider amending the regulations by standardising the wording of regulations of the Act on health care services financed from public funds with the terminology applied in the Healthcare Institutions Law. The Chairman of the Health Committee of the Sejm of the Republic of Poland did not provide an answer to the Human Rights Defender. However, as a matter of fact, the Minister of Health did not regulate the issue concerned with the regulations of the Healthcare Institutions Law, but introduced an adequate change of the definition of accompanying services contained in the Act on healthcare services financed from public funds.

The Human Rights Defender addressed an intervention to the Minister of Health, to the President of the Supreme Medical Council and to the President of the Council of Nurses and Midwives on the violation of patients' rights, in particular the right to intimacy and respect for the dignity, access to information on their health condition, and also to health services. The Minister for Health and professional associations informed the Human Rights Defender of activities being undertaken to guarantee adequate protection standards of patients' rights. In view of the above, the Human Rights Defender ended the activities in this case.

The Human Rights Defender informed the Minister of Health of irregularities on documenting the course and the implementation of medical specialisations, in particular documenting conducted independently by a person specialised in operation and surgery treatments, based on a photocopy from the operational registers or the computer systems, which is not supported by the applicable law. The Human Rights Defender is still awaiting an answer.

In another intervention to the Minister of Health, the Human Rights Defender raised the problem of access of the insured to therapeutic rehabilitation in the light of information of the Supreme Audit Office, entitled "Availability and Financing Therapeutic Rehabilitation," in which the Office critically assesses the model of financing therapeutic rehabilitation adopted in Poland by the National Health Fund

(pol. NFZ), which does not take into consideration the fundamental and the most important meter of the rehabilitation process, which is the final result of the therapeutic intervention. The Minister informed the Human Rights Defender of the already undertaken and planned activities. At the same time, the Minister assured that he systematically monitors accessibility to healthcare services in the field of therapeutic rehabilitation and in case of any doubts consults National Health Fund immediately. The case is in progress.

The Human Rights Defender addressed an intervention to the President of the National Health Fund on the compilation by the Fund voivodeship departments lists waiting for confirmation and implementation of orders for certain medical devices, which is not supported by the applicable law. After the Human Rights Defender became familiar with the President of the National Health Fund's position, he asked the Minister of Health to undertake activities to regulate principles for forming queues for medical devices in accordance with the constitutional standards. The case remains in the scope of the Human Rights Defender's interest.

In 2014, the Human Rights Defender continued activities whose purpose was to provide adequate procedural protection to mentally disabled persons. The Minister for Health informed the Human Rights Defender that in assumptions being designed of change of the Act on the Protection of Mental Health, it is planned to introduce changes whose purpose is to provide such persons with procedural rights by introducing an obligatory appointment with professional legal representatives by the court. The case will be still monitored by the Human Rights Defender.

In conjunction with the tragic situation which has been prevailing in the Institute of Psychiatry and Neurology for many years, the Human Rights Defender asked the Minister of Health to immediately undertake activities in order to provide patients with such treatment conditions in which their right to respect for their dignity and intimacy will not be violated. In response, the Minister of Health informed the Human Rights Defender of the planned and undertaken remedial activities. The matter remains in the Human Rights Defender's interest.

In an intervention to the President of the National Health Fund the Human Rights Defender indicated the problems of joint trips of spouses (close persons) for spa treatment (referral to the same spa treatment facility and in the same period, and future accommodation in the spa treatment facility). The President of the National Health Fund provided clarifications and assured that the Fund voivodeship departments concur with applications of the insured for joint spa treatment, unless premises specified by the law in this respect occur.

The Human Rights Defender asked the President of the National Health Fund to inform him whether the interpretation adopted in the resolution of the Supreme Administrative Court provoked changes to the practice of the National Health Fund departments in the field of issuing an administrative decision in the case of refusal

to confirm the referral because the medical specialist did not approve the purposefulness of the treatment. In response, the President of the National Health Fund explained that as a result of the amendment of the Act on healthcare services financed from public funds, the provision of the Act was changed, which introduces the requirement of confirmation of the referral by the Fund voivodeship department by explicitly indicating that in these cases the provisions of the Code of Administrative Procedure do not apply. In an intervention to the Minister of Health, the Human Rights Defender indicated that the exclusion of application of the provisions of the Code of Administrative Procedure to refuse to confirm the referral on account of the purposefulness of the treatment does not imply that an individual administrative act (decision) will not be issued in the case. The Minister agreed with the Human Rights Defender's assessment. At the same time, the Minister remarked that confirmation of the referral for spa treatment is an activity referred to in the Law on proceedings before administrative courts, and thus it is subject to court and administrative inspection, and the refusal to confirm the referral is not such an activity. The case remains in progress.

## **F. Rights of the disabled**

The Human Rights Defender again paid attention to the necessity to adapt the applicable regulations in the field of protection of rights of persons with disabilities to conform with international standards, in particular to those ratified by the Poland Convention. It is necessary to amend regulations of the Civil Code and to change the concept of total and partial incapacitation, which has been functioning for years, together with the organisation of issues of representation of rights of such persons in trade (including in proceedings before state authorities), key for them to participate in social life. The Human Rights Defender monitors the course of legislative works in this area.

The Human Rights Defender applied to the Minister of Labour and Social Policy on the non-application of regulations of the Act on sign language and on other means of communication to the activity of voivodeship centres for road traffic (pol. WORD), whose result is that during examinations, deaf and hearing-impaired persons are not provided with a Polish translator for sign language assistance. The Human Rights Defender applied to indicate whether a change of the above-mentioned Act is being considered to include WORDs in the scope of the application thereof. The Human Rights Defender is currently awaiting for the Minister to take a stand.

In an intervention to the Government Plenipotentiary for the Disabled, the Human Rights Defender indicated the absence of adequate legal regulations in the sector of telecommunications services, which would impose on the entrepreneurs

the obligation to use facilities for the disabled. The Human Rights Defender is awaiting an answer.

A change to the principles of granting parking cards introduced in 2014 drew a strong response from persons with disabilities. Persons who previously had parking cards for an indefinite period of time, and in conjunction with strengthening the criteria for granting thereof, will lose them and it was indicated that the constitutional protection of the acquired rights is violated in this manner. The limitation of the circle of persons entitled to the park card to persons with determined reasons for disability also raises considerable doubts. The introduced changes involve the necessity to apply for issuing a new certificate on the degree of disability, as a result of which, not only the fulfilment of new conditions entitling to the park card, but also the level of disability itself is subject to assessment of the adjudicating panels. It was repeatedly signalled to the Human Rights Defender that the previous degree of disability of persons who apply for a new certificate only to obtain the park card was "lowered." The newly-introduced procedure for issuing the parking cards also causes enormous problems (making the possibility to obtain it conditional on having a permanent place of residence as defined by the regulations on the population register). The Human Rights Defender applied in this case to the Minister of Infrastructure and Development, as well as to the Family and Social Policy Committee of the Sejm of the Republic of Poland.

## **G. Right to exercise profession**

In intervention to the Minister of Health, the Human Rights Defender voiced her doubts in relation to the "Regulations for Conducting the State Specialisation Examination," and asked to take a stand in the case and to undertake activities to remove reservations being raised on the question of legality and application of the Regulations in practice. Unfortunately, the Minister of Health did not see the necessity to change the Regulations, and the Human Rights Defender was depleted of the legal capacity to act in the case.

The Human Rights Defender applied to the Minister of Infrastructure and Development on car diagnosticians' professional liability, indicating that the regulations of the Act on Road Traffic provide for the imposition on a diagnostician who violated his/her obligations of an administrative sanction in the form of withdrawal of licence to conduct technical examinations for a period of five (5) years. At the same time, there is no possibility of gradating penalties (there is only one – the withdrawal of the licence), which results in the diagnosticians who are severely-punished even for trivial faults. Such a regulation is disproportionate and interferes too much in the principle of freedom to choose an occupation. The Human Rights

Defender asked the Minister to consider initiating changes to the Act on Road Traffic. The matter remains in the Human Rights Defender's interest.

In another intervention to the Minister of Infrastructure and Development, the Human Rights Defender raised the matter of the Regulation concerning seagoing vessels' crew members' training and qualifications and stated that it was issued without due observance of the constitutional standards of a democratic law-governed state. The Regulation came into effect on the next day, after it had been announced, and it is to apply to cases initiated and uncompleted under the rule of previously-applicable regulations. The introduction of material changes without *vacatio legis* caused that the interested were deprived of the possibilities to undertake activities to prevent the negative effects thereof.

## H. Road traffic

The Human Rights Defender put forward an application to the Constitutional Tribunal to state that regulations of the Annexe to the Regulation of the Minister of Infrastructure on detailed technical conditions for road signs and signals and traffic safety devices, and for the placement thereof on the roads, are at variance with the regulations of the Act on Road Traffic Law and with the Constitution. As a result of the analysis of complaints being received by the Human Rights Defender from the disabled driving motor vehicles, the problem of limitation of the statutory right to disobey certain road signs concerning no traffic or no waiting, which these persons are entitled to, emerged. The Court agreed with the Human Rights Defender's position and stated the unconstitutionality of the questioned regulations.

The Human Rights Defender applied to the Minister of Transport, Construction and Maritime Economy on the inconsistencies of the Regulation concerning the issuing documents showing qualifications to drive motor vehicles with the Act on the drivers of vehicles, which, contrary to the Act, enables the issuing of a duplicate of the document in situations in which a new document should be issued. The Minister agreed with the Human Rights Defender's objections and assured that he sees the necessity to amend the Regulation. In October 2014, the Minister submitted the project of the new Regulation for inter-departmental consultations. The Human Rights Defender is awaiting for the legislative process to end.

In an intervention to the Minister of Infrastructure and Development, the Human Rights Defender asked to define paid motorways because the statutory authorisation to issue the regulation on paid motorways does not specify any instructions concerning the content of the executive act, and therefore it does not satisfy the constitutional requirements. The decision on whether a given section of the motorway is paid or unpaid should be made on the basis of objective criteria



which are regulated by the law. The Minister indicated that the paid sections specified in the Regulation must satisfy the condition of the possibility to use another publicly-available public road. The Minister also added that the problem of constitutionality of the statutory authorisation will be re-analysed in detail. The case is in progress.

The Human Rights Defender had doubts as for the constitutionality of the provision of the Regulation of the Minister of Internal Affairs on the proceedings for drivers violating the regulations of road traffic. Under this Regulation, participation in the training course does not reduce the number of points received for the violation of regulations of road traffic towards a person who committed violations before the training course commenced, and for which the sum of final points and subject to temporary entry exceeded, or would have exceeded twenty-four (24). The Minister did not agree with the Human Rights Defender's position.

The Human Rights Defender accepted clarifications received in this respect.

## I. Protection of rights of foreign nationals

The Human Rights Defender submitted the "Implementation of Minor Foreigners' Right to Education" report to the authorities responsible for the education of minor foreigners staying in Poland and voiced the main problems in the sphere of implementation of this right. The Human Rights Defender stated, *inter alia*, that it is necessary for the Ministry of National Education to develop a special *vademecum* of proceedings addressed towards those communes who would be interested in filling in full-time positions as cultural assistant. The matter remains in the Human Rights Defender's interest.

In conjunction with the new regulations coming into effect, the Human Rights Defender talked to the Chief of the Border Guard about the difficulties in the Border Guard taking detained foreigners, in particular families with children, to guarded centres. The Chief of the Border Guard explained that the Guard only takes advantage of detention in case alternative protective measures may not be used. In case detention in the guarded centre is adjudicated by the court, the foreigners are transported, taking advantage of the maximum possible conveniences (trip by passenger cars or buses, not by a prison van, children's seats for children, provisions, and appropriate breaks during travel to rest). The matter will be monitored by the Human Rights Defender.

The Human Rights Defender signalled to the Minister of Internal Affairs the problem of migrants who are EU citizens, and who are unable to regulate their stay in the territory of the Republic of Poland on account of poor material situation, the inability to take up employment or the absence of health insurance. In response, the Minister informed that he is conducting works on the preparation of "Vademecum

of Proceedings towards Foreigners with a Non-Regulated Status,” and also that he prepared the action plan in case larger groups of migrants throught to Poland. Regarding entry and stay in the territory of the Republic of Poland of EU Member States’ citizens, the Minister assured that they are being continuously taken into consideration in activities of the Government Department. The case is in progress.

The Human Rights Defender asked the Minister of Labour and Social Policy to take a stand with regards to the possibility to use by certain categories of foreigners profits from the governmental programme for families with many children. The Human Rights Defender noticed that the regulations putting the above-mentioned programme into practice do not mention foreigners having a permit to stay in Poland for humanitarian reasons and foreigners to whom a permit for a tolerated stay was granted among entities authorised to obtain the Large Family Card and to take advantage of the programme. The matter remains in the Human Rights Defender’s interest.

# THE MOST IMPORTANT ISSUES IN THE FIELD OF THE PRINCIPLE OF EQUAL TREATMENT AND COMBATING DISCRIMINATION

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## A. Combating discrimination on the grounds of race, ethnic origin or nationality

The Human Rights Defender, bearing in mind the purpose of ensuring that the discriminated entities have adequate protective measures, constantly monitors the course of criminal proceedings, above all in the field of preparatory proceedings in cases of crimes driven by hatred. The continuation of activities whose purpose is the correct preparation of adequate state authorities and services to react to incidents of a racist or xenophobic character needs to be acknowledged as extremely important. Therefore, the Human Rights Defender undertakes or supports subsequent initiatives whose purpose is to strengthen competences in this respect, as well as to exchange experiences between different entities.

In an intervention to the Minister of Internal Affairs, the Human Rights Defender raised the issue of the necessity to establish a system of integrated monitoring of crimes driven by hatred. In the opinion of the Human Rights Defender, the platform, as the first systematic action which allows to monitor crimes driven by hatred, and not just on a racial and ethnic background, to large degree would contribute to the increase in knowledge on the scale of the phenomenon, and as a consequence to the proper response to cases of discrimination.

A special situation of the Romany community has been in the Human Rights Defender's interest for many years. The case related to an attempt to regulate the stay of the group of Romany people coming from Romania in Wrocław, and an analysis of the situation of the Romany people in the Małopolskie Voivodeship revealed a few problems of a general character, which the Human Rights Defender voiced, for example, in an intervention to the Mayor of the City of Wrocław and to the Minister of Administration and Digitization. The Human Rights Defender encourages the creation of a coherent algorithm of conduct in cases where larger groups of migrants appear in Poland, and which require specific care on the part of the state. The mitigation of the present situation, as well as combating conflicts in the future, also requires undertaking resolute activities by the government administration. The Minister of Administration and Digitization agreed with the Human Rights Defender's opinion, indicating that the government and local government administration cannot passively watch phenomena being described in the mass media.

In an intervention to the Minister of Internal Affairs and in conjunction with cases being examined, the Human Rights Defender paid attention to the problem of an approach of the Polish state to migrants – European Union citizens who are unable to regulate their stay on the territory of Poland for different reasons. The Human Rights Defender asked the Minister to take a stand in the case and to assess whether a specific situation of these migrants requires the state to undertake complex activities whose purpose would be to improve the conditions in which these persons stay in Poland.

The Human Rights Defender also resumed activities concerning the education of children staying in centres for foreigners. In an intervention to the Minister of National Education, the Human Rights Defender raised that children to whom the obligation of compulsory education applies should be enrolled to schools immediately after they have been enrolled to the centre; the Human Rights Defender also paid attention to the need to organise additional Polish language classes and to develop cooperation with the cultural assistant. A repeatedly formulated application by the Human Rights Defender concerning the introduction of a statutory prohibition on placing minor persons, as well as their caretakers, in guarded centres remains justified. The Minister of National Education agreed with the Human Rights Defender's opinion that all children to whom the obligation of compulsory education applies should be enrolled to school immediately after they have been enrolled to the centre for foreigners. The Minister also agreed with the Human Rights Defender's comments that the absence of interest in learning Polish on the part of foreign students cannot be the reason for the school to refrain from organizing these type of classes. The Ministry also undertakes activities concerning the popularisation of information on the possibility for the school head teacher to engage a person having a good command of the language of the students' country of origin as teaching assistance.

## **B. Combating discrimination on the grounds of age**

In an intervention to the Chairman of the Parliamentary Special Committee for changes in legal codes, the Human Rights Defender voiced comments and recommendations concerning the introduction of further solutions supporting the participation of elderly persons and persons with disabilities in the electoral process. In the opinion of the Human Rights Defender, in the course of works on the amendment of the Electoral Code, a proposal to expand the list of voters authorised to take advantage of the procedure of voting by correspondence should be considered. The Human Rights Defender also called for the introduction of the statutory obligation for communes to organise free-of-charge transport for the elderly voters, and for voters with disabilities, to the polling stations. It would also be a necessary solution

to introduce a procedure which enables public authorities to effectively inform each voter of the most important issues related to the elections in the form of an individual notification.

The Human Rights Defender applied to the President of the Polish Bank Association on making it difficult for elderly persons using an identity card issued for an indefinite period of time to use banking services. These persons were unable not only to take advantage of the financial instruments offered by the banks, but also access to their own financial resources in their bank accounts. In response, it was marked that irregularities were of an incidental character and have been eliminated.

Activities related to adequate health care for senior citizens were also continued. In the opinion of the Human Rights Defender, it is necessary to develop, *inter alia*, appropriate institutional and legal framework for care over people afflicted by Alzheimer's disease at the central level. The Minister for Health assured that the purpose of various activities being currently undertaken by the administration is to ensure the adequate quality of health care addressed to persons afflicted by Alzheimer's disease.

Also, one of the fundamental problems in the health system is the impediments of access to health care services financed from public funds and the fact that patients have to wait for treatment. The Human Rights Defender indicates a dramatic situation with regards to the availability to the cataract surgery as an example of such state of affairs. The Human Rights Defender asked to undertake essential activities whose purpose is to implement the constitutional right to the protection of health by ensuring universal access to the cataract surgery. The Minister for Health explained that the issue concerning queues with patients awaiting cataract surgical treatment is monitored on an ongoing basis, and expenditures for the implementation of the health care services in the field of cataract treatment have been systematically increasing. The Human Rights Defender will continue activities related to combating discrimination of senior citizens in health service.

The Human Rights Defender's doubts were also raised by the issue of re-introduction of an age limit to the Act on judicial and enforcement officers, after which bailiffs are forced to cease further professional activities. In accordance with the applicable Regulation, the Minister of Justice dismisses a bailiff from the position if the bailiff reaches seventy (70) years of age. In the opinion of the Human Rights Defender, maintaining the age limit with regards to judicial officers may violate the constitutional freedom to practise the profession. The Minister for Justice informed the Human Rights Defender that in his opinion there is no need to undertake works to change the above-mentioned regulation, which is necessary to guarantee the respect for rights of all parties to the enforcement proceedings, and the protection of the State Treasury's interests. The case remains in the scope of the Human Rights Defender's interest.

## C. Combating discrimination on the grounds of sex

In an intervention to the Minister of Labour and Social Policy, the Human Rights Defender paid attention to conclusions resulting from the “Combating Violence against Women, including Elderly Women and Women with Disabilities” report. In the opinion of the Human Rights Defender, a coherent and long-range state policy in the area of preventing and combating violence on the grounds of sex has not been created so far. The specificity of violence on the grounds of sex, age and disability should be furthermore taken into consideration in the applicable legal acts and in other programme documents concerning the prevention and fight against violence. The Minister informed the Human Rights Defender that on 29 April 2014, the Council of Ministers adopted a new National Programme for Counteracting Domestic Violence.

The Human Rights Defender also addressed an intervention to the General Prosecutor and to the Ministry of Justice on the application of an order by the courts to vacate a residential flat occupied together with the aggrieved and a ban on approaching the aggrieved. Taking into consideration the overall number of proceedings and sentences for harassment offences, the Human Rights Defender recognised that these resources are not optimally used. The issues of combating violence on the grounds of sex remains within the scope of the Human Rights Defender’s interest.

Data published by the National Statistical Office of Poland and by the Supreme Audit Office, which indicate that actual inequality on the grounds of sex with regards to remuneration for work (the so-called pay gap) remains in Poland, and it should be acknowledged as alarming. The Human Rights Defender asked the Minister of Labour and Social Policy for information on activities undertaken to promote the principles of equal remuneration of women and men for the same kind of work or for work of the same value. In response, the Minister indicated selected activities whose purpose is to promote the issue of equal remuneration of women and men who work in the same positions and for work of the same value. The issue will be the subject matter of the Human Rights Defender’s further activities.

In an intervention to the Government Plenipotentiary for Equal Treatment, the Human Rights Defender stressed that on the basis of numerous analyses, an application can be formulated on the relatively-low share of women composing public authorities coming from elections. The currently applicable quota system in proportional elections is of limited effectiveness, which leads to a conclusion that it is legitimate to supplement it by passing regulations on alternate placing of female and male candidates on the electoral register (the so-called ‘zipper’). The Government Plenipotentiary agreed with the Human Rights Defender’s position and informed about activities being undertaken in this respect. The Human Rights Defender

monitors legislative and non-legislative activities in this respect, as well as the analysis of effectiveness thereof.

In 2014, the Human Rights Defender also continued activities related to monitoring the implementation of the sentence of the European Court of Human Rights in cases *Tysic versus Poland* and *R.R. versus Poland*. The Human Rights Defender again sent to the Minister of Health the report on the analysis of the records of the cases conducted by the Patients' Ombudsman, together with recommendations concerning the necessary amendment of the Act on patients' rights and the Patients' Ombudsman. At the same time, the Human Rights Defender emphasised that s/he still receives signals from non-governmental organisations which show that women who are entitled to oppose often decide not to do so, recognising that the procedure is too complicated, long-lasting and ineffective. The Human Rights Defender asked to present the current state of legislative works. The Minister for Health informed that the project of assumptions of the draft of the Act on the change of the Act on patients' rights and the Patients' Ombudsman, and certain other Acts, will be submitted for examination by the Committee of the Council of Ministers in the nearest future.

In an intervention to the Minister of Internal Affairs, the Human Rights Defender raised the case concerning identical physical fitness tests for women and men in the recruitment process to the Police force, without taking into consideration the biological differences between them. The Minister informed that the purpose of the questioned regulation is to protect proper personnel needs of the Police force, which have an influence on the assessment of a candidate's usefulness for the service and are objectively justified. The Human Rights Defender continues to analyse the regulation for the consistency thereof with the Constitution.

## **D. Combating discrimination on the grounds of sexual orientation and sexual identity**

On the basis of the conducted social research, the Human Rights Defender drew up a report entitled "Equal Treatment of Patients – Non-Heterosexual Persons in Health Care. Analysis and Recommendations." In the course of the research, the following problems were particularly diagnosed: lower standard of medical care, being a result of the stereotypical perception of non-heterosexual patients and their humiliating treatment, the violation of the patient's right to confidentiality of information related to that patient, the limitation of presence of a close person when providing medical services without justification, and the limitation of access to the medical documentation and the health condition information to an authorised close person (a partner of the same sex), persons experiencing unequal treatment not

using the available measures – notifying competent authorities of the situation (the so-called *underreporting*), insufficient legal remedies. The Human Rights Defender will undertake activities whose purpose is to popularise the arrangements made and to implement the recommendations formulated.

Furthermore, the Human Rights Defender raised the case of a foreigner in which the Minister of Internal Affairs refused to issue a permit to purchase a fixed property, justifying that the fact that the foreigner has entered into partnership with a citizen of Poland proves no existence of his bond with the Republic of Poland, and therefore it does not entitle him, as a foreigner, to purchase the fixed property in Poland. The Voivodeship Administrative Court [PL WSA] dismissed the complaint against the decision of the Minister. The appeal against the sentence of the WSA was brought by the applicant and by the Human Rights Defender. The case remains in progress.

A complaint concerning a trans-gender, fourteen-year-old girl was also received by the Human Rights Defender, towards whom the guardianship court issued an order to place her in a care and nurturing institution on account of, *inter alia*, numerous absences from school being a result of humiliating treatment of the girl on the part of her peers. The Human Rights Defender put forward an application to the Court to change the ruling of the guardianship court. In the opinion of the Human Rights Defender, the court did not take into consideration the complexity of the child's situation, and placing the girl in a care and nurturing institution, and engaging her in socio-therapy for the so-called demoralised young people will re-expose her to difficult relations with peers. The Court agreed with Human Rights Defender's argumentation in full in the case and considered the application for entrusting the girl to her mother's care in full.

The Human Rights Defender also continued activities related to the adjustment procedure of the certificate of sex of trans-gender persons. In an intervention to the Minister of Justice, the Human Rights Defender repeated the recommendation to undertake works on complex statutory regulation referring to the situation of trans-gender persons. The Minister agreed with the view presented by the Human Rights Defender on the necessity to prepare and pass such a legal act.

## **E. Combating discrimination on the grounds of religion, faith or worldview**

The Human Rights Defender put forward an application to the Constitutional Tribunal to determine the inconsistency of regulations of the Animals Protection Act insofar as they do not allow to subject animals to specific manners of slaughter to the sole needs of local religious communities, and at the same time provide for the



criminal liability of a person performing such slaughter. This application was not examined, whereas when examining the case filed by another entity the Court acknowledged that the absence of a permit to subject animals to slaughter in the slaughterhouse in accordance with specific methods required by religious rites and criminal liability of persons performing such slaughter was at variance with the Constitution.

The Human Rights Defender also continued proceedings on the problems with teaching minority religions and ethics in Polish schools. In an intervention to the Minister of Public Education, the Human Rights Defender positively assessed recent changes of the regulation on the conditions and the manner of organisation of teaching religion in public play-schools and schools which are to contribute to the implementation of the sentence of the European Court of Human Rights in the case *Grzelak versus Poland*. However, the Human Rights Defender stressed that in practice there are still problems with the actual organisation of ethics lessons. Bearing the above in mind, the Human Rights Defender commissioned social research in the area of availability of religious minorities' religion lessons and ethics lessons. The results of the research will be published in the form of a report in 2015.

## **F. Combating discrimination on the grounds of disability and the implementation of provisions of the Convention on the Rights of Persons with Disabilities**

Regarding the availability of websites of public institutions for persons with disabilities, the Human Rights Defender applied to the Minister of Administration and Digitization. It results from conducted research, which states that none of the public web portals is fully-available to persons with disabilities. Meanwhile, the time limit for ensuring full availability of the public websites expires in May 2015. In response, the Minister presented the action plan for the attainment of this strategic objective.

The application being received by the Office of the Human Rights Defender concerning difficulties in functioning of persons with intellectual disability in the prison environment proves that there is a need for a reliable assessment of preparation of the prison personnel to work with persons with this type of disability. The Human Rights Defender applied in this case to the Managing Director of the Prison Service. In the answer provided, the Director informed the Human Rights Defender that a new training programme is being prepared in the Prison Service in which content concerning, for example, the disabled, is broadened. The Human Rights Defender will be monitoring activities undertaken in this respect.

In the course of inspection of penitentiary units conducted by the Human Rights Defender and fulfilling the function of the Domestic Prevention Mechanism, the problem of non-adjustment of the penitentiary units and institutions to the needs of people with disabilities emerged. The Human Rights Defender asked the Minister of Justice to take a stand in this case. The Minister informed that the government department periodically checks the conditions in which the disabled serve their prison sentence, as well as the number of such persons. The Human Rights Defender will monitor this issue in the course of future inspections.

The problem of the automatic deprivation of legally incapacitated persons of their active and passive voting right requires urgent legislative activities. This issue also raises considerable controversy, for example, in the doctrine of law, and also among social organisations. The Human Rights Defender asked the Minister of Justice to take a stand in the concerned case. The Minister informed the Human Rights Defender of the preparation of the project of assumptions of the draft of the Act, which changes the institution of incapacitation in Poland in a substantial manner. In conjunction with the taken stand, the Human Rights Defender will resume activities to introduce system changes with regards to the voting rights of persons with disabilities and the institutions of incapacitation.

The Human Rights Defender's Representatives again inspected the polling stations for the adaptation thereof to the needs of voters with disabilities. Inspections were conducted in one hundred and seventy-nine (179) polling stations having a status of being adapted to the needs of the disabled located in twenty-six (26) towns. It was found, as a result of the conducted inspection, that 84% of the inspected polling stations do not satisfy the conditions adapted to the needs of the disabled voters as specified in the Regulation of the Minister of Infrastructure in the stations of district electoral committees. No irregularities were found in only twenty-eight (28) out of one hundred and seventy-nine (179) inspected stations. The detailed results of the inspection will be published in the form of a report at the beginning of 2015.

In 2014, the Human Rights Defender issued a number of reports devoted to the implementation of the rights of persons with disabilities. The most important of them include: "Protection of Mental Health in Poland: Challenges, Plans, Barriers, Good Practices."; "Support for Mentally Disabled Persons on the Labour Market. Analysis and Recommendations."; "Dealing with the Deaf and Deafblind Persons in Public Administration Offices. Analysis and Recommendations." and "Education of the Deaf." The published reports are the result of research and analyses conducted by the Human Rights Defender concerning discrimination on the grounds of disability, as well as the implementation of the provisions of the Convention on the Rights of Persons with Disabilities. All reports are available in an electronic form on the web site of the Office of the Human Rights Defender.

## INFORMATION AND STATISTICAL DATA

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In 2014, the Human Rights Defender received in total 57,127 applications, including 26,470 in new cases, and the amount of the whole correspondence was 113,247.

In the Office of the Human Rights Defender, 5,828 applicants were handled and 38,258 telephone calls were held, giving explanations and advice.

**Table 1.**

<b>The Human Rights Defender:</b>		<b>2014</b>
1	made interventions concerning systemic problems - including motions to take a legislative initiative	264 128
2	submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a higher level act	19
3	made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	13
4	addressed juridical questions to the Supreme Court	3
5	made cassations	50
6	filed cassation appeals with the Supreme Court in civil cases	7
7	filed cassation appeals with the Supreme Administrative Court	5
8	submitted motions to the Supreme Administrative Court for interpretation of regulations	2
9	filed complaints with Voivodeship Administrative Courts	12
10	joined court proceedings	8
11	joined administrative proceedings	3

From among three hundred and eighty-six (386) interventions of a general character and specific remedies addressed by the Human Rights Defender in 2014, most cases were in the field of:

Table 2.

Issues	Number	%
administrative and economic law	96	24.9
criminal law	93	24.1
constitutional, international and European law	90	23.3
civil law	48	12.4
employment legislation and social security	44	11.4

Graph 1. Cases examined by problem area



Graph 2. Major addressees of petitions by the HRD



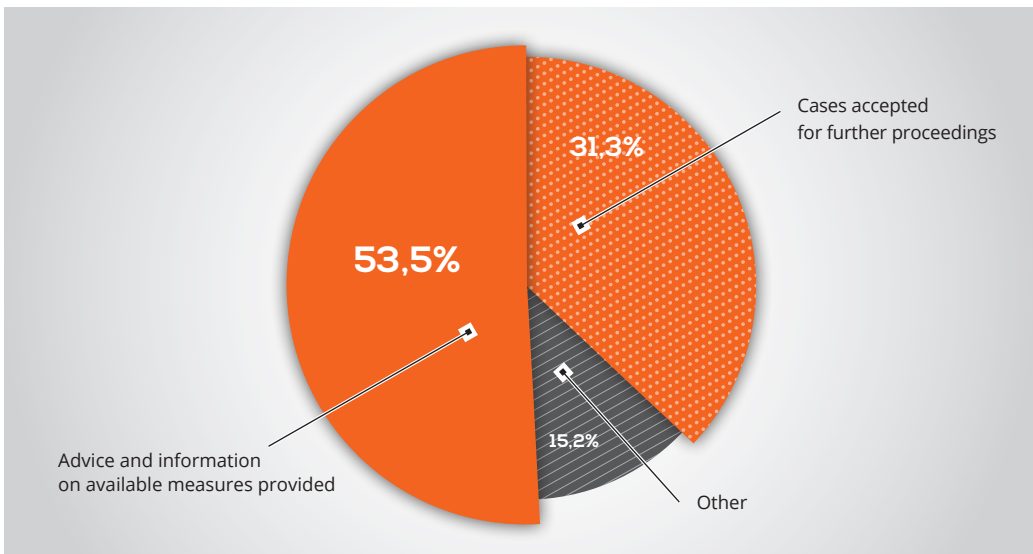
**Cases examined in 2014**

**In the period covered by this Report 31,487 cases were examined, of which:**

**Table 3.**

	Manner in which the case was examined	Number	%
Cases accepted for further proceedings	1 <b>Total</b>	<b>9 851</b>	<b>31.3</b>
	accepted for further proceedings	7 732	24.6
	2 including: on the initiative of the HRD	466	
	3 as general petitions	2 119	6.7
Advice and information on available measures provided	4 <b>Total</b>	<b>16 832</b>	<b>53.5</b>
	5 clarifications were given, measures were indicated to which the applicant is entitled	16 832	53.5
Other	6 <b>Total</b>	<b>4 804</b>	<b>15.2</b>
	7 complaint referred to a competent authority	688	2.2
	8 complaint returned to be supplemented with necessary information	2 673	8.5
	9 not accepted for further proceedings <sup>5</sup>	1 443	4.5
<b>Total</b>		<b>31 487</b>	<b>100.0</b>

**Graph 3. Manner of investigation in 2014**



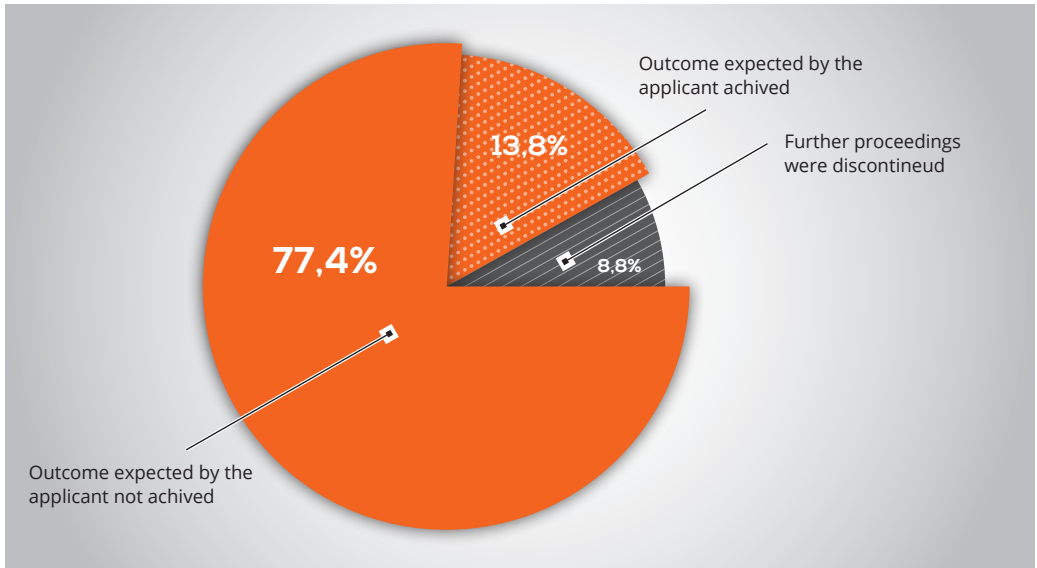
<sup>5</sup> Interventions addressed to other bodies and letters of unintelligible content transmitted to the Human Rights Defender.

**Proceedings were concluded in 7,371 cases, undertaken in 2014 and in previous years.**

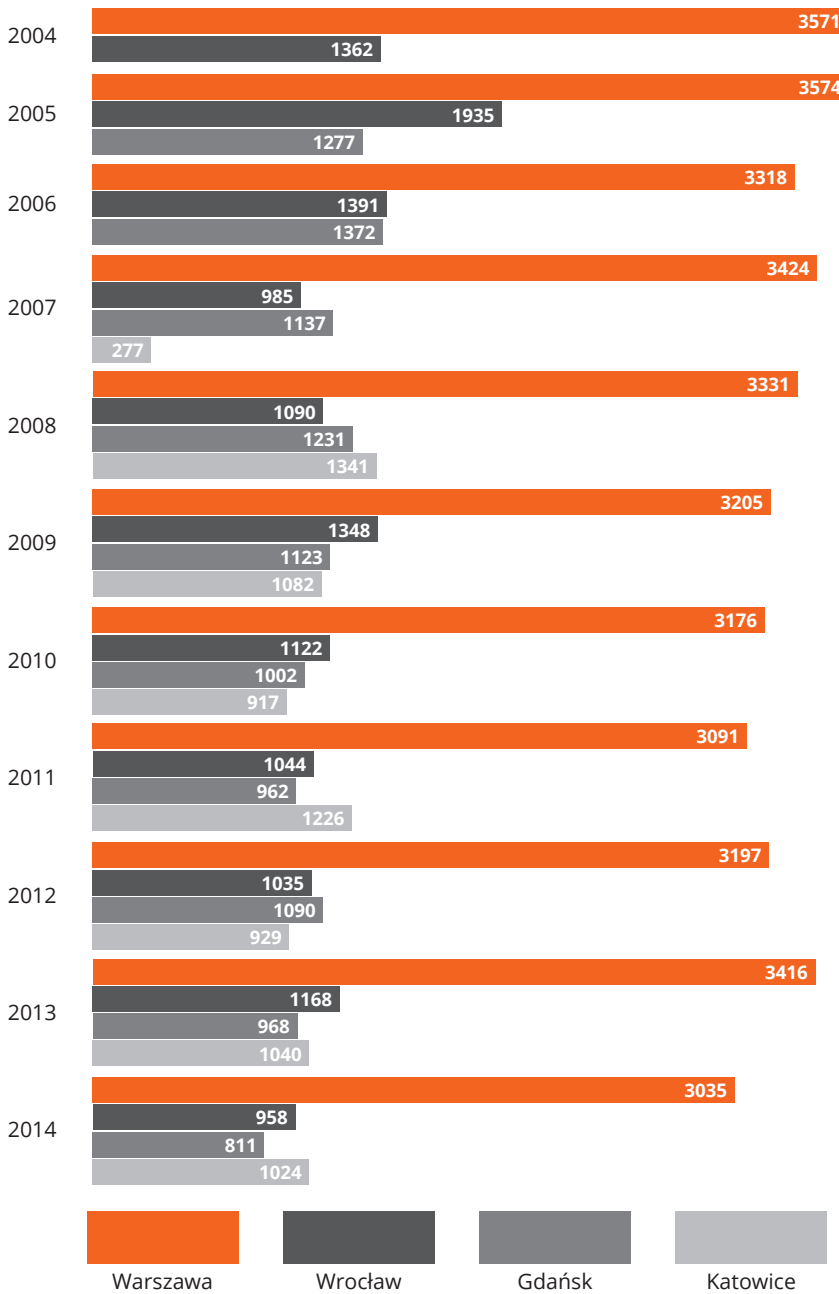
**Table 4.**

Results	Manner of completion	Number	%
Outcome expected by the applicant and the HRD achieved	1 <b>Total (2+3)</b>	<b>1 014</b>	<b>13.8</b>
	2 Applicant's claims confirmed	775	10.5
	3 General petition of the HRD acknowledged	239	3.3
Proceedings discontinued	4 <b>Total (5+6)</b>	<b>650</b>	<b>8.8</b>
	5 Proceedings pending (ongoing procedure)	260	3.5
	6 HRD refrained from further proceedings (objective reasons)	390	5.3
Outcome expected by the applicant was not achieved	7 <b>Total (8+9+10)</b>	<b>5 707</b>	<b>77.4</b>
	8 Applicant's claims not confirmed	5 547	75.3
	9 General petition of the HRD not acknowledged	133	1.8
	10 Measures available to the HRD exhausted	27	0.3
<b>Total</b>		<b>7 371</b>	<b>100.0</b>

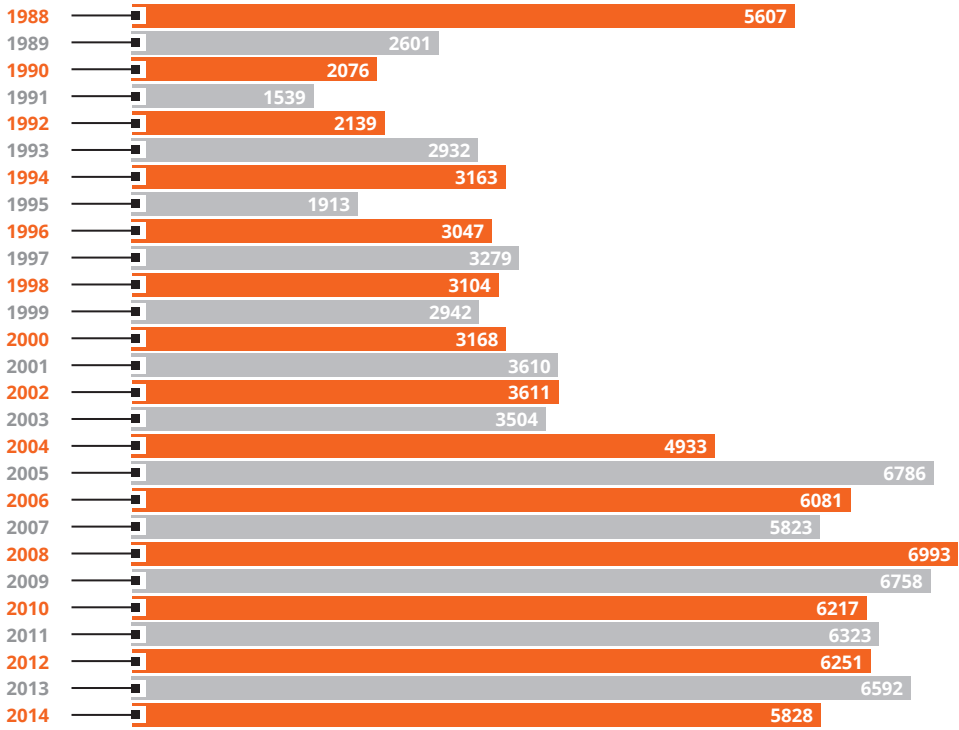
**Graph 4. Completion of cases undertaken**



Graph 5. Applicants received

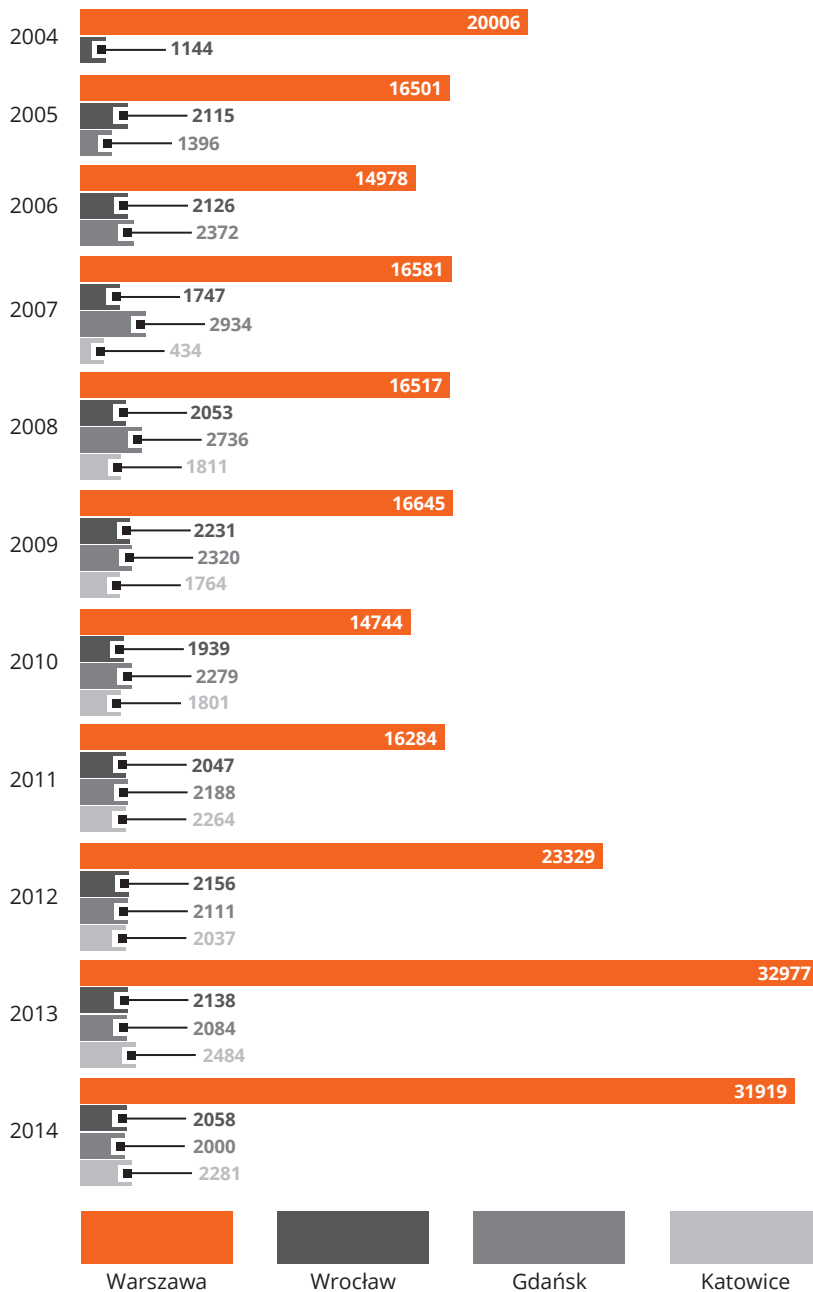


**Graph 6. Applicants received in the years 1988-2014**

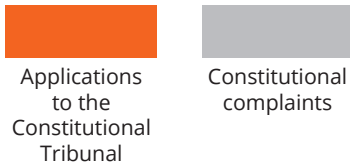
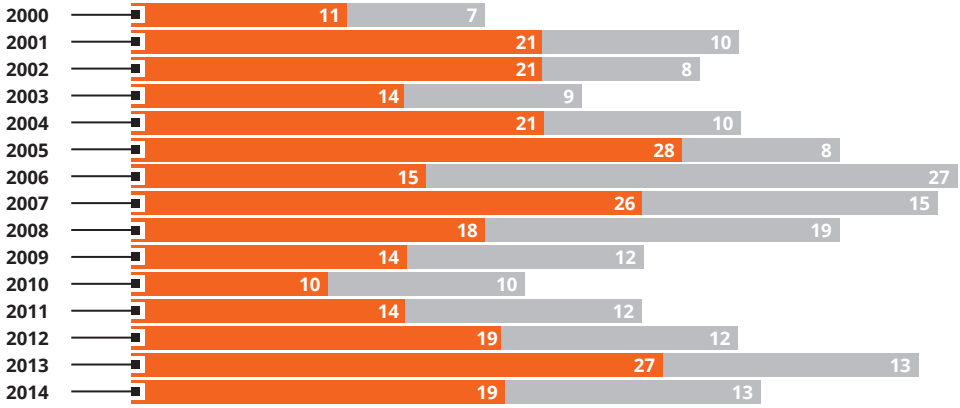




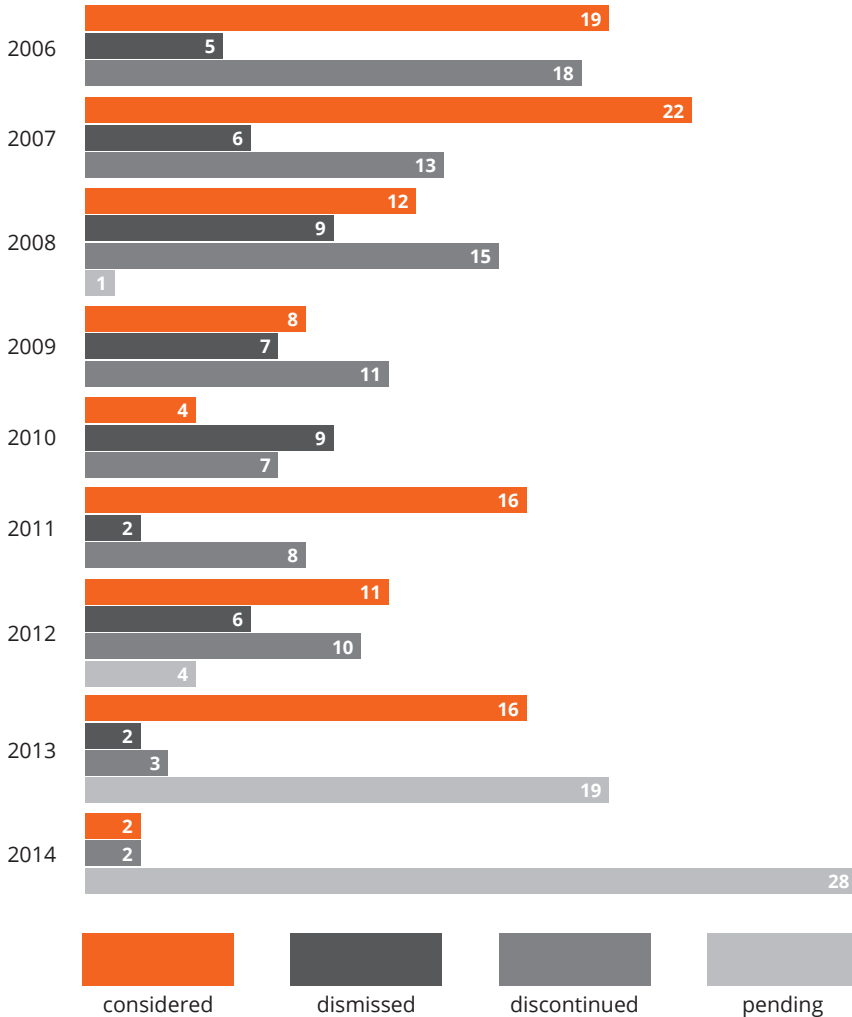
**Graph 7. Advice provided by telephone**



**Graph 8. Motions to the Constitutional Tribunal (CK) and proceedings in constitutional complaint (CC) cases joined by the Human Rights Defender**



**Graph 9. Decisions by the Constitutional Tribunal on motions to declare regulations incompatible with the Constitution and on proceedings in constitutional complaint cases joined by the HRD in particular years<sup>6</sup>**



<sup>6</sup> State as at 31 December 2014

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