fot. Panek

Irena Lipowicz
Human Rights Defender
(Ombudsman of
the Republic of Poland)

HUMAN RIGHTS DEFENDER BULLETIN 2012, No 3
SOURCES
Summary of Report on the Activity of the Human Rights Defender in 2011 with Remarks on the Observance of Human and Civil Rights and Freedoms

Editor-in-chief:
Stanisław Trociuk

Edited by the Office of the Human Rights Defender:
Irena Kumidor

Published by:
Office of the Human Rights Defender
al. Solidarności 77, 00-090 Warsaw
www.rpo.gov.pl
Civic Helpline 800 676 676

Cite as:

HDR Bulletin. Sources 2012, No 3

ISSN 0860-7958

Submitted for typesetting in June 2012.
Authorised for publication in July 2012.
Edition: 500 copies.

Cover design:
ADV. Michał Gońda Agencja Reklamowa
www.adv.net.pl

DTP, proofreading, printing and binding:
Pracownia C&C Sp. z o.o.
www.pracowniacc.pl

SUMMARY

of Report on the Activity
OF THE HUMAN
RIGHTS DEFENDER
(Ombudsman of the Republic of Poland)
in 2011

Table of contents

Introduction

In accordance with Article 80 of the Constitution of the Republic of Poland, everyone shall have the right to apply to the Human Rights Defender for assistance in protection of his freedoms or rights infringed by organs of public authority. The application is free of charge and does not require any particular form. The wide legal basis as well as absence of formal requirements and financial barriers result in the Defender receiving numerous applications: in 2011 she received 58,277, of which 27,491 applications concerned new cases. The majority of applications involved penal law (32.9%), civil law (20.9%), and administrative and commercial law (18.9%).

The Defender can also act on her own initiative, *inter alia* based on analysis of information in the media, or take took up cases *ex officio* upon receiving information (e.g. from prisons, pre-trial detention centres, Police) on the so-called extraordinary events involving public officials. In 2011, the Defender took up 596 cases on her own initiative.

In her work the Defender is assisted by the Office of the Human Rights Defender. At present, the relevant tasks are performed by the Warsaw-based Office and Offices of Local Representatives in Wrocław, Gdańsk and Katowice.

Within the period covered by this Report, 32,343 cases were examined, of which 9,572 were undertaken under the procedure established by the Act on the Human Rights Defender as they concerned possible infringements of civil rights and freedoms. In 20,875 cases the applicants were advised on the measures they could take; in 497 cases the applicants were requested to supplement their applications, whereas 477 cases were referred to the relevant competent authorities. A high number of cases where the applicants were advised on the available measures shows that the need exists for better education and for increasing legal awareness of Polish citizens. This situation also distinctly shows that the universal system of legal support and information, which is an important aspect of the democratic rule of law, does not function well in Poland after the 20 years of independence. This is why so many persons who address the Defender expect to get information on how and where to turn to have their problems solved rather than to have their rights protected; and they are given such information.

In 2011, 6,323 persons (including 3,232 persons admitted in the Offices of Local Representatives and Customer Service points) were received by the staff of the Defender's Office. Attempting to meet the expectations and needs of citizens, the Defender established Customer Service Points in Wałbrzych, Częstochowa, Krakow, Olsztyn, Lublin and Kielce. The points, located in the premises made available by voivodes or local authorities, are run by the staff of Local Representatives and by the Defender's Office in Warsaw. Furthermore, in 2011 the staff of the Human Rights Defender's Office answered 22,783 phone calls to provide explanations and advice.

Within the period covered by the Report, the Defender forwarded 204 petitions concerning specific problems to the competent authorities. The Defender used this very important way of highlighting breaches of individual rights or freedoms when

the cases examined showed that the application of law in a way resulting in such breaches was becoming widespread. The petitions were also forwarded to competent authorities when the analysis of complaints submitted to the Defender showed that the source of breaches of individual rights was the law itself. As regards the latter, in 2011 the Human Rights Defender lodged 92 petitions for a legislative initiative. Moreover, she exercised her right to challenge a faulty normative act in force. In 2011, the Human Rights Defender lodged 14 petitions to the Constitutional Tribunal to verify normative acts for their compliance with superior regulations or with the Constitution. The Defender also participated in 12 proceedings instituted before the Tribunal in result of a constitutional complaint.

In the relations with the justice, the legal inquiries referred by the Defender to extended adjudication panels are of particular importance. Such inquiries are intended to unify the judiciary practice, and as such constitute a legal measure aimed at protecting the principle of equality before the law. In practice, inconsistent interpretation of the law by courts leads to an infringement of the principle of equality before the law. In the wake of divergences found in the body of case law of the common courts, the Human Rights Defender addressed seven legal inquiries to the extended adjudication panel of the Supreme Court in 2011. The divergences in case law of administrative courts inspired the Human Rights Defender to address three legal inquiries to the extended adjudication panel of the Supreme Administrative Court.

As to individual cases examined by courts, the Defender lodged to the Supreme Court 80 cassation appeals against legally binding decisions of the common courts. In administrative cases, the Defender lodged 10 cassation appeals to the Voivodeship Administrative Courts, and two cassation appeals to the Supreme Administrative Court.

The year 2011 was another year when the Defender acted in the capacity of the National Preventive Mechanism (NPM), i.e. as an authority entitled to visiting places of detention. To perform the task, a separate organisational unit was established at the Office of the Defender, in compliance with international standards, namely the National Preventive Mechanism Team. The capacity of the Defender to act as the National Preventive Mechanism was also directly entered into the Act on the Human Rights Defender when it was recently amended.[1]

The visits carried out under the National Preventive Mechanism must be regular, that is they must be carried out with adequate frequency. In Poland, there are about 1,800 places that should be visited, and that would require 38 FTEs. At present, however, there are only seven persons who execute the task, so in 2011 the Office of the Defender was able to carry out only 89 visits, due to the scarcity of funds. It should be noted that at this frequency, a unit falling under the Mechanism would be visited

[1] Act of 18 August 2011 (Dz. U. No 222, item 1320).

just once in twenty years. The situation is caused by a permanent underfunding of the National Preventive Mechanism. The subsequent draft budgets of the Defender's Office submitted to the Parliament envisaged an increase in funding for this purpose, however they were never approved. Consequently, in 2011, Poland did not fully meet its commitment under the international agreement to ensure funds necessary for the National Preventive Mechanism to function. The situation is expected to improve in 2012 as the Defender was granted additional funds for the task, although we are still far from reaching UN standards in the area.

2011 was the first year when the Defender performed the tasks she was entrusted with pursuant to the Act on the implementation of some European Union regulations on equal treatment.[2] Some of the tasks, such as those relating to the examination of complaints about breaches of the equal treatment principle, are not a novelty to the Defender. However, the Act also entrusts the Defender with some new tasks which require additional expenditure that had not been provided for in the previous budgets. The tasks include, but are not limited to, analyses, monitoring and support of equal treatment; independent studies on discrimination; as well as drafting and publishing independent reports on discrimination. The Defender was entrusted with new tasks, but no funds were allocated for this purpose, contrary to the principle of good legislation. The Defender was granted funds for the tasks only in the 2012 budget, but they are still insufficient to allow full implementation of the tasks laid down in the Act.

However, in 2011, in spite of the lack of funds, the Defender started to perform the tasks related to equal treatment by reducing expenditure for other statutory purposes. To this end, some studies were carried out and controls executed as regards the exercise of voting rights by the disabled and senior citizens. In addition, two reports were drafted on the accessibility of public infrastructure to the disabled, and on preventing violence on grounds of race, ethnic origin and nationality. Voluntary contribution of experts played a very significant role in performing the task.

The Defender cooperates with associations, citizens' movements, as well as associations and foundations acting for the protection of freedom and human and civil rights. Within the framework of this cooperation, the Defender's Office hosted several seminars, debates and conferences, devoted primarily to the Defender's priorities, i.e. to the protection of the rights of seniors, the disabled and migrants. Under the auspices of the Defender, the Centre for Senior Citizen Initiatives was inaugurated as a ground for agreement and cooperation between public institutions, social organisations and groups promoting active living among the elderly (PAW).

There are three expert committees attached to the Defender: for the elderly, for the disabled, and for migrants. The committees are very diligent and highly involved

[2] Act of 3 December 2010 (Dz. U. No 254, item 1700).

in supporting the Defender in performance of her tasks, in particular in the area of equal treatment on grounds of age, disability, sex, nationality, ethnic origin and faith.

As far as the international activity of the Defender is concerned, in 2011 she continued implementation of the project under the European Union Eastern Partnership. The project comprised, *inter alia*, the programme 'Partnership for Human Rights – Poland, Armenia, Azerbaijan.' Apart from the Polish Defender, also Defenders/Ombudsmen from Armenia, Azerbaijan and France participated in the programme, whose aim was to exchange experience in the area of Ombudsmen's tasks related to human rights protection. Furthermore, the National Preventive Mechanism representatives actively participated in thematic workshops of national mechanisms, organised by the Council of Europe.

Social and educational activity of the Defender in 2011 was broad and intense. The Defender's Office organised open debates on major problems notified by citizens and by NGOs (such as classes in ethics at schools, protection and retention of personal data, website blocking, reverse mortgage, and prevention of racist acts). Two Jan Nowak-Jeziorański Debates, dedicated to the contemporary understanding of notions such as dignity and freedom, were held with participation of distinguished scientists and NGO representatives. The activity of the 'Effective Democracy' ('Sprawna Demokracja') coalition, initiated by the Defender, and of initiatives such as 'Election Light' ('Światełko wyborcze') and 'Solidarity Chain' ('Łańcuch Solidarności'), received extensive media coverage and attention from the public. It should also be noted that the Defender's Office staff organised trainings for the Sejm deputies' assistants, Senators and judges on human rights and the Defender's competence, with positive effects. Educational activities were accompanied by many publications, brochures and leaflets in a number of languages, distributed among different groups, e.g. during the so called "Polish Woodstock" festival and the Gathering of Scout Seniors and Elders.

1. Major issues concerning constitutional and international law

A. Right to good legislation

The legislative process, perceived primarily through the actions of the regulating authority, requires an in-depth reform. In 2011, the Defender continued monitoring the irregularities in the legislative process, including undischarged authorisations provided for in the acts to issue implementing regulations by government administration, and the delays in implementing of the EU law. According to the information notified to the Defender, as of 11 February 2011, there were 170 undischarged authorisations, provided for in the acts, to issue secondary legislation by the government administration. This means that the number of delayed secondary legislation remains at the same high level, year after year. In the Defender's opinion, such delays prevent correct application of the legislation, which affects the confidence of citizens in the State and in the law it enacts. The information submitted to the Defender also shows that the government's agenda covers 25 draft acts adjusting the Polish law to the law of the European Union, whereas 21 regulations of secondary legislation should have been adopted and entered into force during the previous Sejm term. According to the European Commission report, Poland ranks high among Member States with the highest number of such delays and breaches of EU law. The Defender is monitoring the progress of transposition of the EU law in Poland and warns against the effects of incomplete and untimely transposition of this law into the Polish legislation in the area of rights and freedoms protection.

The obligation to publish normative acts and certain other legal acts, observing the appropriate *vacatio legis,* is closely associated with the guarantees of individual's rights stemming from the reliability of the legally established order, the certainty of legal transactions, and the protection of citizens' confidence in the State and the law it enacts. The addressees of legal norms must have sufficient time to adjust to new regulations. The way the Act on reimbursement for medicines, foodstuffs for particular nutritional uses, and medical devices was introduced largely ignored the above guarantees of individual's rights. In her address to the Minister of Health, the Defender pointed out that the Act was published on 13 June 2011, but the decisions on the list of reimbursed medicines, the information collected by pharmacies, and the prescriptions were only made a few days before the key regulations of the Act entered into force. The secondary legislation for the Act was planned to enter into force on 1 January 2012, however it was not published under the procedure laid down by the Act on publishing normative acts and certain other legal acts, i.e. with an appropriate *vacatio legis*. Such situation caused anxiety among patients and discontent among physicians and pharmacists. The Defender addressed the Minister of Health to take her remarks into consideration to avoid similar situations in the future. In his reply, the Minister of Health explained the reasons behind the failure to provide appropriate *vacatio legis,* and assured the Defender that the Ministry would take appropriate measures to avoid such situations in the future.

The Defender, on her own initiative, participated in a proceedings concerning a constitutional complaint about the provision of the Code of Commercial Companies stipulating penal liability for acting to the detriment of a company. In her opinion on the issue, the Defender claimed that the wording of the said provision, as of the date when the constitutional complaint was filed, did not specify precisely enough the features of an act liable to penalty, and as such was inconsistent with the Constitution. The provision referred to was repealed on 13 July 2011, yet the convictions on the grounds of the repealed provision are still legally binding. Therefore, the Defender believes that a decision on the matter would be essential for the adequate protection of constitutional rights and freedoms of the plaintiff. The case is still in the field of interest of the Defender.

B. Right to judicial protection of rights and freedoms of an individual

In 2011, the Defender took up the issue of a possibility to record a trial in a civil case using a sound recording device. According to the law currently in force, a court reporter records an open court proceedings, using a device that records sound or image with sound, and also makes a written transcript of such proceedings - under the supervision of the presiding judge. The regulations in force do not explicitly state whether a party can record an open trial. The Defender made an inquiry to the Minister of Justice regarding this issue. In reply, the Minister of Justice informed that no law provision existed that would prohibit a party to record a trial or make it conditional on the court consent. However, if the method used by a party to record a trial would result in violation of the court authority, order or agenda, the court could call the courtroom guards to reprimand the party or ban further recording.

In her petition addressed to the Constitutional Tribunal, the Defender questioned the provisions depriving a member of the Polish Hunting Association, punished with a disciplinary penalty other than expulsion from the Association, of the right to lodge appeal in court. The Defender also concluded that the provisions of the Hunting Law were so vague that they actually allowed the Polish Hunting Association to formulate disciplinary hunting regulations in an unrestricted way, which was contrary to the principle of citizens' confidence in the State. The Defender also acceded proceedings on a constitutional complaint in a similar case. Both cases are pending before the Constitutional Tribunal.

The Constitutional Tribunal examined the Defender's petition, lodged in 2008, to proclaim the following legal acts as unconstitutional: the Decree on Martial Law, the Decree on special proceedings in cases of offences and misdemeanours under the martial law; the Decree on remittal of certain offence cases to the military courts as well as on changing the organisation of military courts and military organisational

units in the Public Prosecutor's Office of the People's Republic of Poland under the martial law, the Act on special legal regulation during the period of martial law; the Resolution of the Council of State on imposing the martial law for State security reasons. By its judgement of 16 March 2011, the Constitutional Tribunal ruled that the Decree on Martial Law and the Decree on special proceedings in cases of offences and misdemeanours under martial law were unconstitutional. As far as other decrees were concerned, the Tribunal discontinued the proceedings.

In 2011, the Defender approached the Supreme Court to find a solution to a legal question on the application of a penalty for violation of the court authority or for offences against the court, some other state authority or persons attending the court proceedings, which was perpetrated in writing and outside the court proceedings. In the opinion of the Defender, the penalty for breach of the court authority should be limited to cases that occur during the proceedings. The fact that a person, who violates the court authority or offends the court in pleadings or in any other written document drafted outside the proceedings or not used in the proceedings, cannot be punished for breaching the order does not rule out a possibility to prosecute such person or to punish him/her for an offence when the act committed by this person meets the statutory criteria of a crime or an offence. The Supreme Court examined the Defender's request and adopted a resolution in which it supported the Defender's position.

The Defender participated in a number of proceedings in cases of constitutional complaints regarding the provisions of civil procedure violating, in the claimants opinion and in the Defender's opinion as well, several aspects of the right to fair trial. The cases concerned the following: the lack of obligation for the court to justify its unchallengeable decisions, issued in result of rejecting a complaint about the bailiff's action; the lack of a possibility to appeal against a decision on awarding from the State Treasury the costs of the *ex officio* legal aid provided during the proceedings before the court of the second instance, and against the deadline for lodging an appeal against an enforcement action consisting in describing a real property and estimating its value. The cases are pending before the Constitutional Tribunal.

C. Freedom of speech and the right of access to information

In 2011, the Defender continued her efforts to enforce the Constitutional Tribunal's decision on the duration of the ban on publication in personal rights protection cases brought against mass media, and notified the Minister of Justice of the fact that a possible delay in enforcing the said decision would constitute a violation of the Constitutional guarantee of the freedom of speech, as well as the freedom of the

press and other means of social communication. Eventually, the act amended with the Tribunal judgment was adopted, and it imposed on the court an obligation to determine in its decisions the period during which the ban on publication would to be in force, with a proviso that the duration of this ban should not exceed one year. However, the entitled person may apply for a further extension of the ban before the expiry of the period for which the publication ban was issued.

In order to ensure that the right of freedom of speech, guaranteed by the Polish Constitution and by the Convention for the Protection of Human Rights and Fundamental Freedoms, is respected (as pointed out by the European Court of Human Rights in a case against Poland), it is necessary that the Defender continues her efforts aimed at abolishing criminal penalty for failure to comply with the obligation to authorise the publication of literal quotes. The fact that it is a criminal offence to publish in the media a literal quote from someone's statement, especially a statement made by a public official, is a threat to the right of freedom of speech - a pillar of democratic society, a foundation of its development, and a condition for self-fulfilment of the individual. The Defender addressed the Minister of Culture and National Heritage on this issue, which remains in the field of interest of the Defender.

The Defender also examined the arrangements for re-using public information, proposed in the draft amendment to the Act on Access to Public Information. While sharing the view that we urgently need to adopt a legal regulation laying down specific rules for re-using the public information, the Defender also noted a possible negative impact of the draft act on the right to privacy and on personal data protection. Adopting the concept that the public information should be widely used is equivalent to approving the use of data on persons or on categories of persons for a purpose other than the that laid down in the regulations constituting the legal basis for acquisition of specific information. The Defender addressed the Inspector General for the Protection of Personal Data (GIODO), asking for an assessment of the draft amendment. The Inspector General shared the Defender's concern, and concluded that the above-mentioned issues should be open to public debate.

D. Right to privacy and personal data protection

The Defender contested before the Constitutional Tribunal some of the provisions of the Act on the Police and of some other acts regulating the operation of special forces, related to operational control. In the light of these provisions, operational control allows for using any available technical resources facilitating the obtaining of information and evidence in secret, as well as its recording. In the Defender's opinion, the relevant legal provisions do not comply with the constitutional standard of protecting the right to privacy. The legislator did not specify which technical resources the Police may use to obtain information and evidence. The legislator

also failed to specify what type of information and evidence was referred to. Consequently, the services decide themselves what type of information they want to obtain from an individual for the purpose of operational control, and to this end they use a wide variety of technical measures without any restriction that should be established by the legislator in the act, and contrary to the constitutional principle. The case is pending before the Constitutional Tribunal.

In the Defender's opinion, expressed in the request addressed to the Constitutional Tribunal, the regulation of the Act on Internal Security Agency and Foreign Intelligence Agency, which defines the scope of competencies of the agencies as well as the rules conferring powers, and which provides a legal basis for agencies' involvement in specific activities, including operational activities, does not comply with the principles of solid legislation, including diligent accuracy, precision and transparency of the provisions constituting the legal basis for the executive authorities to encroach on constitutional rights and freedoms. The encroachment on the right to privacy and on the freedom to communicate, especially in secret, must be supported by a legal basis which would be precise, transparent and properly formulated. The possibility to determine the actual borderlines of legality for ABW interference with the privacy and freedom to communicate, guaranteed under the Constitution, is shifted on to the executive authority - in result of imprecise terms used by the legislator in the provisions establishing the ABW operational control competence. The case is pending before the Constitutional Tribunal.

The Defender examined the legal status of the acquisition by various services (i.e. the Police, Border Guard, Military Police, Central Anti-Corruption Bureau, Military Counterintelligence Service, Military Intelligence Service, Treasury Intelligence, Internal Security Agency) of the information subject to communication confidentiality. The analysis has revealed that the situation conforms with the Constitution nor with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The provisions governing the access of individual services to the data subject to communication confidentiality, contested by the Defender before the Constitutional Tribunal, do not precisely define the aim of collecting such data. Moreover, the provisions do not specify the categories of persons whose professional secret must not be violated. The access to telecommunication data is not made conditional upon having exhausted all the other methods to acquire such information, less invasive for the citizen's rights and freedoms. The said data acquisition procedure is not subject to external control. Also, a substantial part of the collected telecommunication data is not destroyed when the data prove useless for the tasks that are carried out. The case is pending before the Constitutional Tribunal.

E. Electoral Law

In several complaints submitted to the Defender it was pointed out that the draw of the numbers of election lists for local governments elections caused problems, due to different dates of such draws. In result, the committees which registered their candidates in one or in several gminas, and were given the number on the list as the last were in the worst position, since they had very little time to run their election campaign using the list number. In his response to the Defender's inquiry, the Chairman of the National Electoral Commission stated that it was practically impossible to draw the election list numbers on the same day. However, the NEC considered it possible to begin the number drawing procedure later, thus shortening the time interval between the drawing stages. In the Defender's opinion, this proposal is worth consideration and should be accounted for in amending the Electoral Code. The Defender requested the Speaker of the Sejm to consider the purposefulness of commencing relevant legislative efforts.

F. Right to education

In 2011, the Defender received numerous complaints against decisions of local authorities to close down schools of different levels. According to the letters received by the Defender, the authorities of the gminas did not consult their plans with the local population, even though the provisions of the Act on self-government of gminas provides for such a possibility when decisions important for the local community are made. The Defender requested the Minister of National Education to inform her whether and how the Ministry intended to prevent the irregularities related to the closing down of schools. The Defender was informed that according to the data provided by the Central Statistical Office (GUS), the number of students in all types of schools was on the decline. At the national level, this directly affected the number of schools. The authority which runs a given school and plans to close it down has a statutory obligation to inform the students' parents (or the students themselves in the case of a school for adults), as well as the chief education officer and the executive body of the local government unit competent for running schools of a given type, about its intentions 6 months prior to the planned closing down.

The Defender addressed the issue of placing on school certificates of students diagnosed with a mild intellectual disability an information that the educational curriculum was adjusted to their individual needs. It seems that such information on a school certificate is not justified by any objective reasons. The fact that everyone who has access to the certificate will also know about the intellectual disability of the student may results in unfair treatment and stigmatisation. The Defender requested the Minister of National Education to present an opinion on the matter,

and to inform what measures are planned. The Minister did not share the Defender's opinion and informed her that in the opinion of the Ministry, such additional information does not violate the constitutional right to privacy.

In 2011, the rules for placing orders for textbooks for blind students and for financing publication of such books were changed. The Ministry of National Education altered the rules for granting subsidies to publishers of such textbooks by shifting a part of relevant obligations on the gminas. The main complaint raised by the blind students as well as their parents and teachers was that the number of textbooks which the students could use during the transition period, secured before the reform, was insufficient, and they would get their textbooks only at the beginning of the second semester of the 2011/2012 school year. In this situation, the rule for granting equal access to education becomes doubtful, as learning for the disabled children is seriously hindered. Therefore, the Defender requested the Minister of National Education to clarify the issue. The Minister of National Education explained that the Ministry would continue implementation of its tasks related to the publication of textbooks for blind students, and that shifting of some of these tasks to the gminas is just optional.

The Defender also addressed the issue of the legislator refusing to award academic merit scholarships to students of two or more faculties, or those who continued their education in a second faculty. Until 30 September 2011, such students could obtain financial aid in the form of a scholarship for academic merit in each field of study, and also when they continued their studies at another faculty, provided they met the criterion laid down in the regulations of the vice-chancellor. In result of the amendment of the Act, the students of more than one faculty may obtain only one scholarship for academic merit. A student who, after having completed his first degree, continues education in another field of study is not entitled to a scholarship for academic merit even if his grades make him eligible for such scholarship. In the Defender's opinion, some justifiable reservations of constitutional character may arise as regards this regulation. Besides, the Defender suspected that a withdrawal of the right to a scholarship for academic merit for students who studied at two faculties or who were continuing their studies in another field after graduation during the 2010/11 academic year, and achieved a high grade average, was in conflict with the rule of citizens' trust in the State and law. The Defender requested the Ministry of Science and Higher Education to present his opinions on this issue.

G. Right to practice a profession and disciplinary proceedings

In 2011, the Defender continued her dealings with disciplinary sanctions which consisted in a lifelong ban to practice a professions of public trust. By its judgment of 18 October 2010, issued upon the Defender's intervention, the Constitutional

Tribunal adjudicated that a part of regulations of the acts on professional self-governing bodies, which provide for lifelong removal from a self-governing body for disciplinary reasons and without the right to apply for re-entry, are not compliant with the Constitution. Such regulations can still be found in the Act on bailiffs and on debt enforcement proceedings. Furthermore, in its letter addressed to the Defender, the National Court Enforcement Council (Krajowa Rada Komornicza) questioned the regulation which provided for unconditional obligation to suspend a bailiff in his duties when he was a defendant in proceedings related to an indictable intentional offence or an intentional tax offence. In the Defender's opinion, this could violate the principle of presumption of innocence. The Defender addressed the Minister of Justice to clarify the issue. The Minister shared the Defender's opinion concerning the need to amend the Act on bailiffs, taking account of the judgment of the Constitutional Tribunal, and also informed the Defender that the Ministry did not intend to amend the regulation related to an unconditional obligation to suspend a bailiff in his duties when he was a defendant in proceedings related to an indictable intentional offence or an intentional tax offence.

The Defender requested the Supreme Court to pass a resolution which would make it clear whether the provisions of the Ordinance of the Minister of National Education on teachers disciplinary board and on the disciplinary procedure were still in force, after 6 months since the day when the provisions of the Act amending the Teacher's Charter Act entered into force. The Supreme Court passed a resolution pursuant to which the Ordinance of the Minister of National Education on teachers disciplinary board and on the disciplinary procedure was still in force after 6 months since the day when the provisions of the Act amending the Teacher's Charter Act entered into force.

2. Major issues concerning penal executive law

A. Judicature and the Public Prosecutor's Office (institution of mediation)

The Defender took up actions to extend the scope of application of mediation in criminal proceedings. In her address to the Minister of Justice, the Defender pointed out that establishing the standards for mediators, similar to those applicable in juvenile delinquency proceedings, and a possible introduction of a mediation certificate, could improve the mediators' qualifications, effectively encourage the judges to use the mediation institution, and increase the effectiveness of mediation. The Minister informed about the measures taken to increase the attractiveness of the institution of mediation among both judicial bodies and parties to criminal proceedings, whereas the Defender's comments would provide material for analysing the qualifications and professionalism of mediation services in civil lawsuits, as well as for verifying mediators.

In 2011, the possibility of recording criminal proceedings using appropriate electronic devices was still on the agenda. The Minister of Justice informed the Defender about legislative work in this area, taking into account the character of criminal proceedings and the experience in implementing the e-protocol in civil proceedings. The regulation will also be affected by the arrangements adopted in the draft Act amending the Code of Criminal Procedure and some other acts, drafted by the Criminal Law Codification Committee (Komisja Kodyfikacyjna Prawa Karnego).

B. Lack or limited recourse to law

The lack of access of an injured party access to the case files in petty offence proceedings, after the completion of explanatory proceedings, spurred the Defender to address the Minister of Justice. First of all, the Defender pointed out the fact that when the competent body finds no grounds for a motion for penalization to be submitted, the injured party is not able to decide without access to the proceedings files whether he/she may effectively submit such a motion to the court. The Minister of Justice agreed with the reservations of the Defender and forwarded the problem to the Criminal Law Codification Committee.

Extending the provisional detention time and notifying nobody but the defence of person to be provisionally detained about the date of interrogation is subject to constitutional complaint proceedings, which were also acceded by the Defender. In the Defender's opinion, violation of the right to legal defence and the right to trial results from the fact that the provisions of the Code of Criminal Procedure allow the defence to participate only in a court session held to decide on the extension of provisional detention time, while omitting the obligation to hear the accused or the suspect at such a session. Notifying nobody but the defence about the date of a court

session held to decide on the extension of provisional detention, where the defence absence at the session provides no grounds for closing the hearing of the case, is not only a restriction of the right to defence and the right to trial, but also it is a proof that these rights are only illusory, abstract and superficial. The case is pending before the Constitutional Tribunal.

By its judgment, issued upon the Defender's intervention concerning the failure to submit to the court a complaint about the prosecutor's authorisation to disclose personal data and image of persons against whom preparatory proceedings are pending, the Constitutional Tribunal ruled that the lack of such legal remedy was a breach of the court protection of constitutional freedoms, robbing the individual concerned of his right for a just and open review of his case without unjustified delay by a competent, independent and impartial court.

C. Right to defence

After having participated in proceedings related to a constitutional complaint, the Defender pointed out that the fact that the defence cannot take notes during trials in closed sessions or notes based on classified files restricts the constitutional right to defence, which is fundamental in criminal proceedings. Any restriction of this right, which does not comply with the basic reasons justifying such restriction, is in contradiction with constitutional standards of fair court proceedings. The case is pending before the Constitutional Tribunal.

The Defender submitted a request to the Constitutional Tribunal to declare the provision on the right to defence in the Petty Offences Procedure Code non compliant with the Constitution in so far as the omission of the right to defence at the stage of explanatory proceedings in the case of persons for whom there are reasonable grounds for believing that a petition for punishment should be drafted. The case is pending before the Constitutional Tribunal.

In her request addressed to the Constitutional Tribunal the Defender also presented a problem associated with the lack of provisions on the possibility of obtaining access to files in petty offence cases at the stage of explanatory proceedings. The lack of proper regularisation in the Petty Offences Procedure Code prevents access to files for both the perpetrator and the victim of a petty offence. This is a violation of the right to defence. The case is pending before the Constitutional Tribunal.

The right to defence is also infringed by the Code of Criminal Procedure which imposes restrictions on the freedom of contacts between the suspect and his defence. The restrictions consist in that the prosecutor is entitled to reserve the right to his or a third person presence when the defence visits the suspect as well as to check the correspondence between the defence and the suspect. The Defender expresses doubts about the legislator's criterion for imposing such a restriction, as it may be

applied in a "particularly justified case". Therefore, it is the prosecutor rather than legislator who sets up restrictions for the constitutional right to defence in this scope. This leads to a conclusion that the above mentioned provision of the Code of Criminal Procedure is unconstitutional. The Defender also requested the Constitutional Tribunal to rule on the unconstitutionality of the said provision of the Code of Criminal Procedure. The case is pending before the Constitutional Tribunal.

The right to defence and the right to trial were a subject of yet another request submitted to the Constitutional Tribunal by the Defender. According to the request, no regulation exists that would allow for appealing against the court president's decision refusing an *ex-officio* appointment of a defence counsel to a party who submitted the relevant application, and against the decision to cancel an *ex-officio* appointment of a defence counsel. In the Defender's opinion, the provision of the Code of Criminal Procedure insofar as it does not take into account the possibility to appeal against the court president's decision to refuse an *ex-officio* appointment of a defence counsel to a party who submitted the relevant application, and the provision of the Code of Criminal Procedure insofar as it does not take into account the possibility to appeal against the court's decision to cancel an *ex-officio* appointment of a defence counsel, are not in conformity with the constitutional standards of suability and instance of ruling, therefore, they are in contradiction with the fairness of proceedings, and they unjustly restrict the right to trial and the right to defence. The case is pending before the Constitutional Tribunal.

The manner the arresting authority exercises the right to attend the conversation between the detained and his/her defence counsel was the subject matter of the Defender's request submitted to the Constitutional Tribunal. In her request, the Defender pointed out that even though the questioned provision of the Code of Criminal Procedure formally guarantees, as a rule, the right to defence, as the detained is entitled, upon his/her demand, to immediate contact and personal conversation with a lawyer, however, the fact that the arresting authority may reserve the right to attend such conversation raises doubts about its constitutional character. The doubts are not so much about the fact that such right may be reserved by the arresting authority and may allow the authority to attend the conversation as about the fact that the act does not stipulate the circumstances which allow for such controlled conversation to take place. The case is pending before the Constitutional Tribunal.

D. Court fees

The Defender participated in constitutional complaint proceedings to set the upper limit of fee of medical expert who provides an opinion based only on the case file. One of the fundamental rights of an expert witness is a broadly understood right to be paid for his opinion and attendance at the proceedings before the authority

conducting such proceedings. This is a property law, one of the laws governed by the Constitution. However, the legislator defined the upper limit for the fee to be paid to medical experts only when their opinions are based solely on case files, whereas other expert witnesses who draft opinions on other matters and issue such opinions based solely on case files are entitled to a fee for each working hour. The case is pending before the Constitutional Tribunal.

E. Personal freedom

Analysing various cases, the Defender came across a problem connected with the possibility to force the accused person to undergo examination using coercive measures, and a problem related to persons assisting in such examination. The Defender requested the Constitutional Tribunal to rule that the provisions of the Ordinance of the Minister of Justice of 23 February 2005 on examination of actions involving the accused person or the suspect that allow to apply coercive measures during the examination of the accused (the suspect) and on attendance during such examination by the Police officers go beyond the statutory authority, therefore, they are contrary to the Constitution in this scope. The contested provisions are also in breach of the constitutional norm according to which the deprivation or limitation of liberty may be imposed only in accordance with the principles and under the procedure specified in a statutory act, whereas the said provisions regulate the subject reserved for legislative power alone. The case is pending before the Constitutional Tribunal.

The Defender notified the Minister of Justice of the problem concerning the admissibility of the appeal against the Supreme Court decision on applying preventive measure in cassation proceedings. Having in mind the divergences in the case-law of the Supreme Court, the Defender believes that proper legislative amendments need to be adopted to settle this problem. It would be reasonable to adopt a provision which allows for lodging the appeal against the Supreme Court's decision issued based on a provision of the law of criminal procedure that provides for applying a preventive measure in cassation proceedings. The application of a preventive measure consisting in provisional detention evidently encroaches on the constitutionally protected right to personal liberty. The case remains in the field of interest of the Defender.

The Defender addressed the Minister of Justice to point out the need for putting in place effective measures aimed at enforcing the final rulings of the European Court of Human Rights. The key legal issue in the presented case involves the relationship between the provision in the Code of Criminal Procedure, which stipulates the rule of independence of criminal courts, and the provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms which imposes an

obligation on signatory States to comply with the final rulings of the Court. In the Defender's opinion, the ruling of the Tribunal that the provisions of the Convention have been infringed – i.e. any detainee or arrested person to be brought before a competent authority if there are reasonable grounds for suspecting that a punishable act has been committed, or, if necessary, in order to prevent the detainee or arrested person from committing such an act or to prevent escape, should be immediately brought before a judge or before other statutory authorised official, and should have the right to trial within a reasonable period of time, or should be released for the time of proceedings – imposed an obligation on the courts, which decided on the temporary detention, to resign from further application of the said measure. The Tribunal ruling may provide a basis for re-opening the criminal proceedings pursuant to the provision of the Polish Code of Criminal Procedure which stipulates that the proceedings shall be re-opened for the benefit of the accused when such a need results from a decision of an international authority acting under the provisions of an international agreement which has been ratified by the Republic of Poland. However, there are no regulations which would explicitly provide for binding the court by such ruling. The Minister did not share the Defender's opinion.

F. Citizen's safety

The Defender notified the Minister of Interior and Administration of the problem associated with the powers of the prosecuting authorities to use and publish records obtained from the monitoring cameras. The Polish legal system does not provide for legal arrangements which would form a legal basis for such operations which significantly encroach on the constitutionally protected citizen rights, including the right to privacy and the image protection rights. In the opinion of the Inspector General for the Protection of Personal Data, it seems necessary to initiate legislative works to amend the statutory acts with respect to general rules and conditions on acceptability of monitoring and video surveillance, aimed at justifying such surveillance and storage period for recordings and their possible publication. The Defender proposed to consider taking appropriate measures and to draft an act that would define the rules for using monitoring data by the state authorities. The Minister informed the Defender that the relevant legislative efforts have been initiated.

The Defender is concerned by a growing scale of crimes committed on racial or xenophobic grounds, such as devastation of monuments and graveyards, racial or anti-Semitic exclamation during different events, or threatening persons who are commemorating the contribution of the Jewish community to Polish history. It is necessary to improve the effectiveness of prosecuting the perpetrators of such crimes. The Defender referred this matter to the Procurator General who did not share her opinion and informed her about the undertaken measures.

From the point of view of constitutional protection of such values as life and health, in the opinion of the Defender the preparatory proceedings in cases of crimes against communication security, which result in the death or serious health damage of a victim, are of utmost importance. Apart from analysing individual cases, the Defender notified the Prosecutor General of the need to carry out periodical controls of such proceedings, and to examine whether or not to issue the relevant guidelines. The Prosecutor General did not share the Defender's opinion in this respect.

G. Protection of the rights and liberties of prisoners

The Defender notified the Minister of Justice of the mediation problem at the stage of serving a sentence. The Defender pointed out that mediation in prison helps to include the perpetrator into the true resocialisation process, while in the case of the injured person it may protect him from another victimisation, and allow him to obtain material compensation. The Minister informed the Defender that the relevant legislative work is ongoing in the Ministry.

The Defender notified the Minister of Justice of the problem of penitentiary supervision by judges, stressing that the results of inspections and of examination of complaints lodged in penitentiary facilities show that the judges do not always notice the problems and irregularities in prison functioning. The Ministry no longer informs the interested state authorities about the results of supervision conducted by penitentiary judges. The annual reports (evaluations) on the functioning of the judges' supervision are no longer drafted, and national meetings of penitentiary judges are not organised any more. In his reply, the Minister explained that he organises, on an annual basis, a supervisory meeting of penitentiary judges, and that information about these meetings is published on the Ministry's website. Generally, the Ministry does not have any reservations about the methods used for inspections and lustration performed by penitentiary judges.

In her address to the Minister of Justice, the Defender raised the issue related to the stay of the means of punishment consisting in suspension of the right to vote. Pursuant to the provisions of the Penal Code, the means of punishments listed therein, including suspension of public rights, take effect on the day on which the decision of the court becomes final and binding, whereas the period for which they have been imposed does not run during the imprisonment, even if the latter is ruled for another offence. The means of punishment in the form of deprivation of public rights and bans may be stayed only when a sentenced person is imprisoned. The actual duration of suspension of public rights and bans is extended beyond the period indicated in the court decision, which means that the suspension of public rights, including active electoral rights in parliamentary elections, may stay even for several dozen of years. In the opinion of the Defender, there is no public interest in

restricting the constitutional electoral right to participate in parliamentary elections. The possibility to participate in social life, even to a limited extent, may have a positive impact on the resocialisation of the convicts. In his reply, the Minister shared the reservations raised by the Defender and informed her that the problem has been notified to the Criminal Law Codification Committee.

In the Defender's opinion, proper sanitary conditions conducive to a good level of personal hygiene among the prisoners should be striven for, as stipulated in the Constitution and in international acts of law. To this end, the so-called sanitary corners should be provided and their equipment should be modernised with better access to hot water, personal hygiene items, and showers.

In her interventions, the Defender repeatedly notified the Prison Service authorities of the excessive restrictions imposed on the prisoners' contacts with their families and with other persons. The restrictions mostly involved random passes, telephone conversations and conditions for receiving visitors.

H. Unusual incidents

In 2011, the Human Rights Defender's Office examined over 250 unusual incidents which occurred in the prisons and jails. The General Police Headquarters submitted to the Defender data on the incidents that occurred in Police detention rooms (PdOZ). A large share of these incidents involves death of persons detained by the Police officers. Each notified case of detainee's death reported so far is subject to a detailed investigation to ensure safety and respect of the rights of detainees. The number of deaths of persons detained to sober up and placed in the Police detention rooms exceeds 70% of the number of all deaths reported in the facilities without round-the-clock medical care. This was the reason for the Defender's intervention with the Minister of Interior to take up actions that would help prevent such incidents. In reply, the Minister admitted that the number of deaths in PdOZs is high and that one of the reasons for this is the insufficient number of sobering-up stations or other types of similar facilities providing round-the-clock medical care. It is necessary to adopt a regulation imposing on the local government authorities an obligation to establish and run sobering-up stations or some other facilities with a similar function in the cities with a population exceeding 50,000.

3. Major issues concerning labour law, social security and uniformed services

A. Protection of workers

The Constitutional Tribunal examined the Defender's request of 2009 to declare certain provisions of the Act on financial market supervision non-compliant with the Constitution. The said provisions put the employees of the Polish Financial Supervision Authority (KNF) on the sidelines of civil services. In the Defender's opinion, the Financial Supervision Authority has the same features as the central government administration bodies. Therefore, the contested provisions are in contradiction with the constitutional rule that the civil service function in the government administration agencies. On 15 June 2011, the Constitutional Tribunal ruled that the provisions of the Act on financial market supervision, challenged by the Defender, comply with the Constitution. In this case, the main constitutional issue consists in establishing legal status of the Polish Financial Supervision Authority as an authority which fulfills its duties through the KNF Office. The Tribunal examined the statutory provisions and the Prime Minister's powers towards the KNF. The Constitutional Tribunal stated that pursuant to statutory provisions the Financial Supervision Authority is a specific central government administration body which enjoys a considerable degree of autonomy, and operates outside the public administration structure. The KNF members originate from various executive organs (Council of Ministers, the President, National Bank of Poland). Therefore, the KNF Office cannot be included among the state administration bodies in the meaning of the Constitution.

B. Termination of the employment contract. Expiry of the employment relationship

The Constitutional Tribunal examined two Defender's proposals submitted in 2009 which concerned the unconstitutionality of a regulation providing for a termination by virtue of law of the employment relationship with the employees who were not offered new work and pay conditions, or with the employees who refused to accept the new conditions on the grounds of the public administration offices reorganization. The first proposal concerned the reorganisation of the offices responsible for environmental protection and trade inspection, the second dealt with the transformation of certain institutions in view of the public finance reform. In the Defender's opinion, the possibility of dismissing employees at the employer's discretion, without the necessity to apply a general clause of notice validity, is a breach of constitutional standards of occupational protection and of the right to trial. In its judgment of 12 July 2011, the Constitutional Tribunal held that the provisions challenged by the Defender that allow for taking arbitrary decisions to offer new employment conditions to selected employees of the institutions and offices to be liquidated

comply with the cited constitutional models. According to the Constitutional Tribunal ruling, the analysis of the challenged provisions shows that the legal structure of employment termination cannot be evaluated as a surprise for the employees concerned. The legal structure cannot be considered a significant infringement of the employees' legal safety and, in consequence, of the principle of protecting the citizens' trust in State and in the law, so as to justify unconstitutionality.

C. Right to old age or disability pension

In view of case-law divergences which concern re-establishing of the entitlement to a benefit or its amount, the Defender requested the Supreme Court to pass a resolution intended to clarify whether a pension agency should issue a decision on resumption of proceedings in order to resume proceedings pursuant to the provisions of the Act on pensions paid from the Health Insurance Fund (FUZ). In fact, the controversy about the following: was the procedure for resumption of proceedings regulated separately and in its entirety in the Act on pensions paid from the Health Insurance Fund (FUZ), or, should the provision of the Code of Administrative Procedure apply if the Act does not provide for the comprehensive regulations? The provisions of the Act on pensions paid from the Health Insurance Fund (FUZ) govern the matter of re-establishing the entitlement to a benefit, or its amount, after the relevant decision becomes final, but they do not stipulate procedural form for institution of the proceedings. Since the Act on pensions paid from the Health Insurance Fund (FUZ) does not provide otherwise for procedural form for institution of the proceedings, the Defender is of the opinion that in this particular case a provision stipulating that the proceedings are resumed by way of an order should apply. Only the order to resume the proceedings provides a basis for the pension authority to proceed with the examination of the grounds for re-commencement and decision on the matter. Moreover, the decision to resume the proceedings plays a significant role of a guarantee. If a pension authority may re-examine the same evidence used to establish entitlement to an old age or a disability pension (or its amount) at any time after the decision becomes final and binding, the minimum level of loyalty to an individual demands that the public authorities inform the interested party in the procedural form about their intention to verify this entitlement. The Supreme Court passed a resolution that re-establishing of entitlement to a benefit or re-establishing its amount does not require a pension authority decision to resume the proceedings, however, the parties must be notified that the proceedings are resumed.

The Defender requested the Constitutional Tribunal to rule on the non-conformity of the provision of Act on pensions paid from the Health Insurance Fund (FUZ) on the re-establishment of entitlement to old age or disability pension, or its amount, with the constitutional principle of citizens' trust in State. Adopting the

above-mentioned provision significantly changed the legal situation concerning the stability of decisions issued on old age and disability pensions. After the decision becomes final and binding, not only the new or recently discovered (i.e. previously unknown to the pension authority) circumstances which existed before the time of issuing the decision are a basis for its revision by a pension authority, but also earlier different evaluation of evidence which was taken into account when a decision was made. Therefore, the pension authority may commence proceedings *ex officio* at any time for a different evaluation of the evidence submitted in the past in order to verify the established entitlement to a retirement or a disability pension, or their amount. In the Defender's opinion, the revision of a case has to be justified by some extraordinary circumstances so as to keep balance between the justifiable individual interest and the public interest. The Constitutional Tribunal examined the Defender's proposal and considered that the unlimited powers of the pension authority to commence proceedings *ex officio* to verify the established entitlement to a retirement or disability pension were unconstitutional.

D. Family rights protection

The Defender declared her participation in the constitutional complaint and presented her position that the provision of Act on family benefits which denies an entitled individual the right to attendance allowance if another family member already has an established right to a family benefit allowance or to an attendance allowance granted for a child in a family in which more than two children suffer from disability, is incompatible with the equality rule in the light of the principle of special aid granted by state to the families raising a disabled child, the principle of marriage protection and the social justice principle. According to the Defender, in this particular case the legislator did not notice the need for a different legal regulation of the right to a benefit in the case of families which care for more than one disabled child. It should be borne in mind that the fundamental aim of the attendance allowance is to partially cover the costs incurred by a family to ensure attendance on a disabled child (or on a disabled adult) and it seems that this solution requires less financial outlays from the public budget than in the case of a child (or children) staying in a public healthcare facility.

On the basis of complaints submitted to the Defender, and based on the request of the Ombudsman for Children, the Defender addressed the Constitutional Tribunal with a proposal to rule that the provisions of Act on family benefits are unconstitutional. The provisions were challenged because they denied a parent his/her right to an allowance for raising alone the third child and successive children. The provisions of the above-mentioned Act establish the maximum combined amount of allowances granted for single parents raising a child at the level of PLN 340.00 per

month - an amount which in view of the fact that the allowance per one child is PLN 170.00 means that it can be granted only for two children raised by a single parent. A similar conclusion can be drawn in the case of a person which is a single parent of a disabled child. The amount of the allowance does not increase in the case of a single parent of a greater number of children (three and more) despite the fact that the financial situation of such parents is certainly more difficult. If the legislator recognized the need to grant public aid to single parents, then, in the Defender' opinion, there is no underlying rationale justifying the elimination of the possibility to grant the right to allowance for a single parent raising the third and successive children in a family.

E. Protection of the rights of soldiers and public service officers

The Defender requested the Constitutional Tribunal to rule on the incompatibility of the provision of the Ordinance of the Council of Ministers on social benefits for customs officials and their family members, in the part containing the words 'Inter Regio', with the provisions of the Act on Custom Service and with the Constitution. The Defender received from customs officials complaints concerning the social benefit consisting in the right to travel by train once a year at the expense of the office. The reservations raised by the complainants concerned the fact that the above-mentioned benefit applied only to travel by the so called 'Inter-Regio' trains. Travelling on trains operated by other railway carriers does not entitle to the benefit. According to the Defender, the contested wording of the provision of this regulation violates the statutory authorization granted by the Act on Custom Service. In the Defender's opinion, the contested provision of the regulation also violates the principle of equality before the law which imposes an obligation to treat equally all legal entities of the same category. The diversification was adopted based on a totally arbitrary criterion of trademark of one of the operating passenger railway carriers. Having regard to the equality principle, the legislator should treat equally not only the beneficiaries of social benefits, but also all economic operators providing passenger railway services.

In the light of numerous complaints on the constitutional incompliance of the provisions of the Act on Police and of the Ordinance of the Minister of Interior and Administration on the recruitment procedure for persons applying to the Police, received by the Human Rights Defender's Office in March 2010, the Defender addressed the Constitutional Tribunal with a proposal to rule on the unconstitutional nature of the mentioned legal acts. The problems raised by the complainants concerned especially the provisions of the above-mentioned Ordinance which authorised a person responsible for conducting the recruitment procedure to

suspend the procedure at any time and for reasons other than those specified in the provisions - by notifying the candidate concerned in writing without giving any reason. While examining the complaints, the Defender came to a conclusion that they resulted first of all from the fact that the legal authorisation to adopt a relevant ordinance, which is stipulated in the Act on the Police, is of a general character and contains no detailed guidelines. The powers vested in a person conducting the recruitment procedure to cancel it in an arbitrary manner without giving any reason is unconstitutional. In the course of the proceedings before the Constitutional Tribunal, both contested regulations become ineffective, when the amended Act on the Police entered into force on 14 October 2011. The amended Act provided a basis for amendment of the contested provisions. The amendments consist in clarification of the provisions on the recruitment procedure. At present, the authorisation to issue a delegated act contains detailed guidelines regarding the content of the ordinance which is to be issued on its basis, therefore, it meets the requirement that the Defender formulated in the submitted request. Therefore, the Constitutional Tribunal dismissed the proceedings, because the contested regulations lost their effect before the Constitutional Tribunal ruled on the matter.

4. Major issues concerning civil law

A. Property law protection and real estate management

In 2011, the Defender was still receiving many complaints about specific administrative proceedings conducted pursuant to the provisions of the so-called special purpose Road Act, i.e. an act which stipulated specific rules for preparation and implementation of the public road projects. Some of these complaints focused on the problem of adequate appraisal of real estates expropriated under such proceedings. In 2010, the Defender submitted a proposal (which still awaits examination) to the Constitutional Tribunal, in which she requested the Tribunal to rule on the unconstitutionality of the provision of the said Act which excluded to a significant extent the possibility to declare a decision as null and void or to repeal a decision on the road project permit, which resulted in expropriation of real property located in the project area. With the same request addressed to the Constitutional Tribunal the Defender also initiated the check on constitutionality of the implementing provisions of the Act on real estate management, which governs the method for determining the market value of land expropriated for the purpose of public road construction. During the ongoing proceedings before the Constitutional Tribunal, the amendment of the contested Ordinance was passed. The majority of reservations raised by the Defender were eliminated after the amending regulation was adopted. Nevertheless, the Defender demands that the Tribunal confirms the unconstitutionality of the repealed provisions, because - she argues - a favourable ruling in this respect would allow the citizens to resume the administrative proceedings which have already been ended and to obtain higher compensation for real estate taken over for the purpose of road construction.

Moreover, the Defender addressed the Minister of Infrastructure with a proposal to separate the proceedings for ruling on the real estate expropriation from those concerning compensation for such expropriation - the separation of the procedures is stipulated in the so-called special acts which lay down specific rules for implementation of the infrastructural projects (construction of public roads, civilian airports, preparations for the 2012 UEFA European Football Championships Finals etc.). The Defender pointed out that the complaints she received proved that there were gross delays in establishing and in payment of the compensations. The Minister of Infrastructure undertook to consider introduction of legal arrangements into the special act on roads and on airports so that a party which appealed against a compensation decision would receive upon its own motion the amount stipulated in the decision. The Defender expects the Minister to commence the relevant legislative work. On the other hand, the Minister considered irrational the solution which would consist in determining the compensation for real estate taken over by the public authorities in the expropriation decisions, with a view to the large number of addressees of these decisions, especially in the case of large projects, such as construction of motorways, express ways, airports, etc. The Defender once again contested the lack of detailed

and more precise regulations in the special acts as far as the rules for granting substitute accommodations to the persons who have been expropriated from a real estate with residential buildings and became homeless. In the opinion of the Minister of Infrastructure, regulating these issues lie within the competencies of the Minister of Interior and Administration. The Defender does not share this view, therefore she will continue to act on this matter.

In 2011, the Defender returned to the issue of the rights of the owners of properties located in the areas covered by the Natura 2000 network, and of the properties entered on the list of areas planned to be included in the network. The Defender pointed out to the Minister of the Environment that the claims for a purchase or for compensation stipulated in the Act on Environmental Protection did not sufficiently protect the rights of the owners, and could not be considered as effective means guaranteeing that the constitutional principle of property right protection is respected. Moreover, the Defender had reservations about the procedure of entering the areas to become part of the Natura 2000 Programme in the list drafted by the Chief Inspectorate of Environmental Protection, especially as far as the legal character of such list was concerned. The Minister of the Environment undertook to send the Defender's comments for consideration during the work on the new environmental act draft objectives. The matter will be monitored by the Human Rights Defender.

The Defender also highlighted a new problem mentioned by the citizens in their complaints, namely the disturbing illuminated advertising and the lack of legislation which would comprehensively regulate the issue of placing such ads on the buildings or in their vicinity. Besides, the applicable legislation does not clearly determine the boundary parameters which would justify intervention of competent state authorities, if exceeded. The Ministry of Infrastructure shared the Defender's opinion, and the Defender awaits the legislative works in this matter to be commenced.

The correspondence between the Defender and the Ministry of Infrastructure resulted in an amendment of the Act on real property management, as regards increases in prices for perpetual usufruct of real estate. The amendment also provided for a mechanism which significantly restricted the increases of annual charges paid by the usufructary.

B. Reprivatisation

The still existing long-term delays in examining the claims resulting from the provisions of the Act on enforcing the right to a compensation for the so-called 'property left beyond the Bug River' induced the Defender to address this issue once again. The Defender addressed her proposals to the Minister of Interior and Administration and to the Minister of Treasury, pointing out the still existing significant

problem of delays and suggesting some possible organizational solutions. In his reply, the Ministers noted that the provisions included in the Code of Administrative Procedures would allow to bring an action not only against inactivity of the public body, but also against excessive duration of the relevant proceedings, and that simplification of certain procedures should speed up the examination of relevant cases. The Defender does not share the optimism of the Ministers with regard to this matter, yet she has no measures at her disposal to solve the problem of an excessive duration of proceedings for awarding compensation for the so-called 'property left beyond the Bug River'.

C. Protection of the right of residents

The Defender once again took up the long-lasting and unsolved problem of the legal status of tenants occupying former company apartments which were sold to other entities - explicit legal regulations in this scope are lacking. The present situation of such tenants is very difficult – they are unable to purchase the apartments and become their owners, and feel insecure about their housing situation. This causes an overwhelming feeling of social inequity. The provisions which grant the tenants of company flats the pre-emptive right have been in force (partly as a result of the Defender's actions) since 2000. Unfortunately, the persons whose apartments were already sold cannot benefit from these legislative provisions. The Defender has repeatedly called for adopting provisions which would mitigate the legal consequences of this situation by e.g. granting financial aid to gminas for purchasing the former company apartments from their private owners. The Defender once again addressed the Prime Minister on the issue in 2011. Unfortunately, this did not bring the expected results, and the problem of numerous tenants of the former company apartments sold to private entities in the 1990s still remains unsolved despite the fact that the difficult situation these people have to cope with today was caused by a long-term delay of the state authorities in adopting proper regulations for the sale of this specific category of apartments.

By the end of 2010, the Constitutional Tribunal examined the proposal submitted by the Defender in 2006, and ruled that the provisions on the so-called temporary flats were unconstitutional. The Tribunal deferred the entry of ruling into force by one year. Unfortunately, the Sejm did not notice on time the need for new regulations which would prevent reintroduction of the legal possibility to enforce the so-called eviction onto the streets. Only after the Defender's reaction did the Sejm prepare and adopt new provisions, which, by the way, was done almost straight away, on 31 August 2011. These provisions are expected, at least in theory, to remove the defects of the previous legislation which was disqualified by the ruling of the Constitutional Tribunal. The Defender submitted other reservations to

the Minister of Justice and to the Minister of Transport. The matter is still monitored by the Defender.

D. Rights of members of housing cooperatives

During the last few years, the Defender has repeatedly informed the competent authorities about various problems associated with the housing cooperatives and resulting mainly from incoherent and vague legislation. As the work on preparation of a new Act on housing cooperatives, ongoing until the end of the 6th term of the Sejm, was well under way, in 2011 the Defender limited her activities in this respect, however, she addressed to the Supreme Court a legal query on the assessment of legal validity of a transitional arrangement which allowed the meetings of housing cooperatives members' representatives to take place, despite the fact that since the amendment of the Act on housing cooperatives in 2007, the supreme authority of the cooperative was the General Meeting.

Furthermore, the Supreme Court examined the Defender's legal query on the validity of resolutions adopted during a partial General Meetings when at some of such partial General Meetings the item of agenda concerning the resolution was deleted. In its resolution, the Supreme Court shared the Defender's opinion.

The Defender also pointed out the issue related to general exemption of members of housing cooperative from the costs of court proceedings in cases concerning the obligation of a cooperative to transfer property rights to a flat, irrespective of the proceedings outcome. The Minister of Justice shared the Defender's opinion in this respect, therefore, the relevant legislative works are expected to initiate soon.

The Minister of Transport, Construction and Maritime Economy also shared the Defender's opinion that the Act on housing cooperatives lacked provisions stipulating the rules for adjusting the amount of housing deposits when a flat is not sold by tender after the tenant's cooperative right to such flat has expired and the cooperative is obliged to establish a cooperative housing tenancy right to such flat. Therefore, the Defender expects the Minister to commence relevant legislative works in this respect.

For a number of years, the Defender has dealt with the issue related to the adoption of a regulation which would enable members of housing cooperatives to appoint their proxy for the General Meetings. The provision was incorporated into the Cooperative Law Act by the Act on limiting administrative barriers for citizens and entrepreneurs.

E. Sale of residental units

In 2007, the Defender corresponded with the successive Ministers competent for housing construction on the need for legislation that would protect flat buyers on the primary market against unfair practices and against the consequences of bankruptcy of real estate developers. The Defender proposed to adopt appropriate provisions which would lay down the necessary content of the agreement to be signed with a developer, and the obligation to conclude the agreement in the form of a notary deed; the provisions should also impose an obligation on developers to provide information and lay down arrangements safeguarding buyer's financial interest, such as a trust account or investment insurance. The arrangements proposed by the Defender were incorporated into the Act on protecting the rights of flat or detached house buyers, adopted in 2011.

F. Housing for officers of uniformed services

In 2011, the Defender addressed a proposal to the Minister of Interior and Administration, pointing out that a growing number of complaints submitted by active and retired Police officers, who hopelessly waited for a flat they were entitled to from the resources of the Ministry of Interior and Administration, proves that these resources are too limited compared to the existing needs. Nothing is known about any measures of the Ministry taken to acquire new housing units so as to extend the resources. The Act on the Police explicitly guarantees, however, that the above-mentioned groups are entitled to a flat. However, the statutory rights often turn out to be an illusion, since it is impossible to exercise these rights because of the insufficient number of flats in the Ministry resources. The Minister agreed with the Defender, and acknowledged that certain legislative amendments should be made to replace the right to receive a flat from the Ministry with a proper increase in salaries, taking into account the current condition of the state budget.

G. State financial aid for the housing industry

During the last few years, the Defender reiterated proposals addressed to the Minister of Infrastructure, pointing out that financial aid to subsidize the interest on bank loans granted for purchasing a flat, provided for in the Act on providing support for the families in purchasing an apartment, is not available for singles and for persons without children, including divorced persons or cohabiting couples. At that time, the Defender addressed the Minister to extend the group of beneficiaries of the said Act so that it would include singles. The Act of 15 July 2011, amending the Act

on providing support for the families in purchasing a flat and some other acts, added singles to the group of persons eligible to receive a preferential loan and subsidies to interest on the loan.

H. Amendment of the Code of Civil Procedure

In September 2011, the so-called extensive amendment of the Code of Civil Procedure, with many proposals submitted by the Defender, was adopted. In particular, the amendment included the following: 1) regulation that a legally binding adjudication of the property ownership under the enforcement proceedings is equivalent to an enforcement order not only for release of a real estate (coming into possession), but also for vacating the premises without the need for a separate eviction proceedings; 2) change in the method of calculating the deadline for appealing against an enforcement measure in the form of description and evaluation; 3) an order for the family court to decide on minor guardianship and to regulate the matter of contacts with a minor after the proceedings have been completed, even if such proceedings are conducted under the safeguard procedure.

5. Major issues related to administrative law, economic law and other branches of law

A. Protection of the consumer rights

In the light of the complaints received, there is a need to continue with the actions aimed at increasing the access to advisory services in the area of consumer law, and to the information on the consumer rights.

The Defender addressed the President of the Office of Competition and Consumer Protection with an issue concerning the rules applicable to the insurance benefit when a stillborn child is born. The President's reply suggests that all complaints lodged to the Office of Competition and Consumer Protection concerned the group insurance coverage for employees. As far as this form of insurance is concerned, any customer relationship is out of question, and the Office has no grounds to take any measures whatsoever. The issue is still monitored by the Defender.

The Defender addressed the President of the Polish Bank Association in connection with bank requirement to deliver divorce sentence for the purpose of credit worthiness assessment. According to the Defender, adoption of statutory regulations for assessment of the credit worthiness should be taken into consideration. The President of the Polish Banks Association notified the Defender that her proposal was submitted to the banks to introduce more rational procedure in respect of divorce sentences. At the same time, the President explained that such sentences very often included rulings on the obligation of maintenance which may affect the evaluation of credit worthiness.

The Defender addressed the President of the Office for Railway Transport on the issue of actions undertaken by the Office for Railway Transport to protect the passengers' rights. According to the President's reply, the numerous controls gradually improve the passengers' situation. With a view to the information provided by the Office for Railway Transport that the funds allocated for implementation of statutory obligations of the Office are insufficient, the Defender addressed the Minister of Infrastructure. In its reply, the Ministry informed the Defender that the amount of funds allocated for the operation of the Office for Railway Transport was beyond the Ministry's control. The Office notifies *ex officio* the Minister of Finance of the need for funds in the draft state budget that it requires. The issue is still monitored by the Defender.

B. Public levies

The Defender addressed the Minister of Finance on the issue of interpretation doubts when applying the 7% VAT rate to municipal housing construction industry. According to Minister's reply, the construction works which consist in conversion of a hospital building into a building to be classified, based on the Polish Classification of Types of Constructions (PKOB), as a healthcare institution building providing

medical and nursing care services may be eligible for reduced rate, provided that the change in purpose and classification results from the relevant documentation. It was pointed out that the grounds for a possible legislative amendment would be examined with the next amendment of the Act on Goods and Services Tax. The issue is still monitored by the Defender.

The Defender addressed the Minister of Finance on the lack of possibility to deduct the full amount of the VAT following the purchase of a vehicle by persons providing ambulance services. The Minister replied that the sanitary transport services were exempt from the tax. However, the tax payers who provide such services are not entitled to deduct the tax charged on the purchase of ambulances and other goods and services used to provide sanitary transport services. The case is pending.

The Defender addressed the Minister of Finance on the issue of diversified legal situation of lessees (tenants) who sell their goods on the market places, depending on whether they sell inside buildings or other structures or in the parts thereof. The lessees (tenants) of buildings or parts thereof are exempted from market place fee, whereas the same entities which carry out similar activity inside the structures (or parts thereof) have to pay the fee because they are not property tax payers, and they do not sell their goods in buildings or in the parts thereof. In its reply, the Ministry informs that maintaining the tax obligation, included in the market place fee for sellers running their business in buildings, does not lead to any inequalities among the entrepreneurs.

The Defender addressed the Minister of Regional Development on the issue of securing the EU funds paid to beneficiaries under the 2007-2013 financial perspective. According to the financial support principles, the aid paid is secured by a blank promissory note issued by the beneficiary. Securing the financial aid by means of the said promissory note is not challenged. However, the complainants pointed out that the applicable template of such note aroused fears among entrepreneurs that they would have to bear an excessive risk. The Minister presented the position of the Polish Agency for Enterprise Development on the security in the form of a blank promissory note, which took into account the proposal to include the name of the borrower and the date of issue in the blank promissory note template in the future. For the agreements currently in force, it is proposed to enclose a new promissory note template in the form of an annex to the agreement - upon the beneficiary's request.

C. Road Traffic

The Defender addressed the Minister of Interior and Administration on the issue of divergences in the case-law of administrative courts, which result from the provisions governing the issue of driver training intended to reduce the number of demerit points for violating the Traffic Code regulations. In his reply, the Minister

informed that work on the amendment of the Act on Road Traffic has already been initiated. The draft act is at its final stage, consisting in interministerial consultations. At the same time, the legislative work on amending the Ordinance on the methods of dealing with traffic offenders is underway.

In view of the request of the President of General Medical Council, the Defender requested the Minister of Health to take position on the issue of the Ordinance of the Minister of Heath on medical examination of drivers and persons applying for a driver license. The General Medical Council noted that this act may infringe the principles of good legislation, and argued that the method for assessing the condition of persons suffering from diabetes and epilepsy in order to determine whether or not there are any medical contraindications for vehicle driving goes beyond the statutory entitlement stipulated in the Act on Road Traffic. According to the reply, the provision imposing an obligation on a physician to inform the authority issuing driver licenses about the need to evaluate health predisposition to drive vehicles for a person who suffers from a serious hypoglycemia or symptoms similar to epileptic seizure, or is suspected to suffer or suffers from epilepsy, is transposed from the EU legislation. The Defender was also informed that the work on amending the acts implementing the Act on persons driving vehicles had commenced.

D. Environment protection

The Defender requested the Supreme Administrative Court to decide on the following legal issue: "In cases where an increased fee is charged for exploitation of the environment without a required permit, is the very fact of exploiting the environment without such permit enough to charge the fee, or should the public administration body also investigate the reasons why the required permit is lacking?" In the Defender's opinion, such investigation should be carried out during the proceedings for charging an increased fee for exploitation of the environment - in order to find the reasons for the absence of such permit for the sake of trust of citizens in the State and in the law. On 12 December 2011, the Supreme Administrative Court ruled as follows: "Where, based on the Act on Environmental Protection, the increased fee is charged for exploitation of the environment without a required permit or some other relevant decision, the reason for the absence of such permit may be of significance if the entity exploiting the environment with the required permit applied for a new permit for a consecutive period of time."

The Supreme Audit Office report entitled 'Information on the results of audit related to the administrative fines and their enforcement by the Environmental Protection Inspector' reveals numerous irregularities. Among other things, the following was stressed: an alarming downward trend in the number of controls carried out by the voivodship environmental protection inspectors; inconsistency of legal

regulations that prevent the voivodship inspectors from assessing whether the entities meet the conditions for discharging waste water into natural water systems or into the ground, as stipulated in the permits required by the Water Law, and from imposing the administrative fines based on the results of such assessment; as well as cases of deferring, minimising and redeeming administrative fines by voivodship environmental protection inspectors in contradiction to the provisions of the Act on Environmental Protection. The Defender requested the Minister of the Environment to disclose the information on measures already undertaken and planned with a view to meet the Supreme Audit Office recommendations. In his reply, the Minister of the Environment informed the Defender that legislative work in the area proposed by the Office had been initiated. The issue is still monitored by the Defender.

E. Health care system

As far as the health protection is concerned, the problems of health safety and health care are the most pressing among other social problems. Financial and organisational problems of the health service are compounded by the legislative negligence, such as delayed introducing of regulations that are crucial for the functioning of the health care system and for the patients' rights. The complaints filed to the Human Rights Defender on an ongoing basis prove that the quality of health care services is still unsatisfactory. The most frequent reservations concerned the restricted access to health care services, in particular to highly specialised and costly services, resulting in a very long period of waiting for such services, a poor treatment of patients by physicians and other medical personnel, and in incorrect treatment. The difficult financial situation of many health care establishments constitutes a threat to their normal functioning.

In 2011, the Defender informed the Chairperson of the Inter-ministerial Team for Reform of the Farmers' Social Insurance Scheme that on 26 October 2010 the Constitutional Tribunal considered unconstitutional the provision of the *Act on health care services financed from public funds* which imposes on the State budget an obligation to finance health insurance contributions of all the designated farmers and members of their households who are subject to farmers' social insurance pursuant to the Act, and who pursue business activity, regardless of the level of their income. At the same time, the Tribunal decided that the said provision would be revoked after 15 months from publishing the said verdict in the Journal of Laws (*Dziennik Ustaw*), i.e. on 3 February 2012. In reply, the Defender was informed that studies are ongoing with a view to preparing solutions that could be adopted prior to 4 February 2012. On 13 January 2012, the Sejm adopted the *Act on contributions to farmers' social insurance in 2012*. It entered into force on 1 February 2012.

The Defender inquired the Minister of Health about the appendix to the *Order of the President of the National Health Fund of 29 October 2009 on determining the conditions of concluding and executing agreements on supplying medical devices that are orthopaedic items and aids*. The problem concerned the suspicion that the President of the National Health Fund might have transgressed his authority to determine the conditions of concluding agreements for supplying medical devices that are orthopaedic items and aids. The Minister of Health did not agree with the Defender's reservations.

The Defender again drew the Minister of Health's attention to the problem of insufficient legal solutions on financing and providing medical aid to the homeless not covered by health insurance. The Defender emphasised the need for regulations that would simplify the relevant procedures, and guarantee the financing of medical services provided to the homeless. In reply, the Minister of Health declared awareness of the problem raised, and informed that the Ministry was working on applicable legislative solutions.

The Defender again drew the Minister of Health's attention to the fact that although the system of universal health insurance had been operating for 12 years, no insurance cards had been introduced so far. Therefore, there was no single document to confirm one's rights to free access to health care services. The Minister explained that the method of verifying one's right to free health care services should be the least troublesome possible. Therefore, the Ministry worked out a concept according to which the basic form of verifying the rights will consist in on-line verification. Service providers will verify the right on the date of providing a service by accessing the Central List of the Insured under the National Health Fund.

F. Protection of the rights of patients

In 2011, the Defender continued addressing the absence of regulations on the use of coercive means towards somatic patients. The Minister of Health was again inquired about the problem. In reply, the Minister of Health declared that the proposals of amendments of existing regulations will be introduced to avoid any further doubts and interpretation problems.

As the Defender kept receiving complaints from patients and directors of mental institutions on the total ban on smoking in the premises, resulting from the *Act on the protection of health against the effects of smoking tobacco and tobacco products*, she inquired the Minister of Health on the problem again. The case is pending.

The Constitutional Tribunal did not share the Defender's concerns as to the constitutionality of regulations on the principles of consenting to treatment by juvenile patients, that apply the strict criterion of age instead of the degree of maturity.

G. Protection of the rights of foreign nationals

The manner of implementing abolition for foreigners staying illegally in Poland, introduced *inter alia* thanks to active work of the Defender, should be closely monitored. At the same time, further actions should be taken to improve the situation of foreigners in Poland.

The observance of the rights of foreigners staying in guarded and deportation centres, as well as the functioning of border traffic and border control standards should be subject to further control. Placing juveniles in guarded centres for foreigners raises particular doubts. The practice of courts as to the duration of examining applications for suspending the execution of a decision on deportation should be monitored (it was discovered than in a number of instances foreigners were deported from Poland before a court managed to issue a decision in their case, due to the lengthiness of the proceedings).

6. Major issues relating to the equal treatment principle and to counteracting discrimination

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

In the time of increasing multi-ethnicity and persisting stereotypes about various groups of people, counteracting discrimination on the grounds of race, nationality or ethnic origin faces a number of challenges for both public institutions and the civic society in Poland. State bodies should create and implement a social policy that would ensure protection of human rights and protection against violence - to all inhabitants of the country, regardless of their nationality or ethnic origin. To this end, it is necessary to establish a comprehensive and unified database of crimes committed due to race or nationality hatred, by starting close cooperation in the area of data collection by as many entities as possible, including public administration authorities, the judiciary, and NGOs handling such issues.

In addition, it is necessary to conduct regular studies to discover the actual scale of violence on the grounds of race in Poland. Their results would provide important tips for organising support and prevention, and for actions aimed at raising awareness of discrimination-related crimes, penalised by the Penal Code, so that every potential victim of violence knows the protection measures he/she can resort to.

It is also necessary to continue training state service officers, particularly of the Police, in the identification of and responding to racist or xenophobic incidents, and in the treatment of foreigners. During such trainings, officers should come into direct contact with people of different ethnic or national background to be able to develop their cultural competences.

In the Defender's opinion, it is recommended to maintain and improve the internal control mechanisms of law enforcement bodies aimed at effective prosecution and sentencing of criminals, and to make judiciary bodies sensitive to the preventive and educational aspect of sentences given in cases involving discrimination. The Defender petitioned the General Prosecutor on the matter.

The situation of national and ethnic minorities requires more attention and actions to educate and overcome negative stereotypes. The recent acts of vandalism and racist incidents show that the situation in the area of observing the rights of minority communities and protecting their rights deteriorated. In her petition to the Ministry of National Education, the Defender emphasised the need to include prevention of racism and protection of the Roma minority's rights in the core general curriculum.

In the context of the increasing number of racist and xenophobic incidents in Poland, the Defender drafted a report on counteracting violence on the grounds of race, nationality and ethnic origin.

B. Preventing discrimination on the grounds of disability

Numerous complaints filed to the Defender show that the protection of rights of the disabled requires further actions and changes to improve their situation in many aspects and dimensions of their functioning in the society.

The Defender continued her efforts to ratify the UN Convention on the Rights of Persons with Disabilities. In her petition to the Government Plenipotentiary for Disabled People, the Defender highlighted that in order to ensure efficient and effective protection of rights of the disabled, we must aim at fully adjusting the national legislation to the standards laid down in the Convention, and to ratify it promptly. To that end, it is necessary to amend the provisions of the Civil Code currently regulating the legal incapacitation so as to ensure that people with intellectual disabilities are effectively protected against discrimination.

In the Defender's opinion, it is also necessary to amend the provisions of the Family and Guardianship Code that restrict the right of people suffering from a mental illness of retardation to get married. The Defender petitioned the Minister of Justice regarding this issue.

As to equal access of disabled pupils and students to education, the Defender took actions aimed at changing the rules of financing the education of disabled students so that funds earmarked for that purpose from the educational subvention actually went to the educational establishment attended by the disabled child. Also, in her petition to the Minister of National Education, the Defender raised the problem of including the information on adjustment of the curriculum to individual needs of a student with a slight mental disability. The Defender claimed it may breach the students' right to privacy.

The year 2011 was particularly important from the point of view of execution of voting rights by persons with disabilities. Prior to parliamentary elections, the employees of the Office of the Human Rights Defender visited 90 polling stations that declared the status of a station adjusted to the needs of the disabled in 22 villages/towns/cities. Irregularities were discovered in 72 such stations, or 80% of all the visited buildings. In order to allow persons with disabilities to fully exercise their voting rights, we should act in two directions: on the one hand, we should facilitate access to polling stations and on the other, raise awareness of the new voting procedures, i.e. voting by proxy, voting by mail, and voting with the use of a Braille cover.

The Defender expressed her reservations about the regulations on conducting the examinations for a driver's licence. The disabled are obliged to provide a vehicle for a practical examination. In the Defender's view, it constitutes an unjustified barrier for the disabled; it also hinders their access to the labour market and their full participation in social and economic life. The Defender petitioned the Minister of Transport, Construction and Maritime Economy on the matter. The issue is still investigated by the Defender.

The Defender inquired the Minister of Health on restricting the right of the deaf and people with serious hearing impairment to obtain a driver's licence. Regulations previously in force stipulated that people with a serious hearing impairment, deaf, with a cochlear implant or orally and aurally challenged were allowed to drive. New regulations on the method of evaluating the condition of organs of hearing do not refer to people with a serious hearing impairment or deaf. Consequently, they prohibit such persons to obtain a driver's licence and to drive a motor vehicle. In reply, the Minister of Health declared that work started on amending the Ordinance in question to take into account the interests of the hearing impaired.

The low accessibility of public infrastructure to the needs of the disabled is also a significant problem. In her petition to the President of Poczta Polska S.A. [Polish Post], the Defender pointed out that post offices were not adjusted to the needs of people with disabilities.

In addition, a regulation should be introduced to oblige owners or administrators of public utility buildings to take actions defined by law to eliminate the barriers to everyday existence of the disabled. Introducing an adequate legal obligation could significantly accelerate the process of eliminating the barriers to social integration of the disabled. Recommendations to that end were included in the Defender's report on the accessibility of public infrastructure to people with disabilities.

C. Preventing discrimination on the grounds of age

In the current social and demographic situation in Poland, the most important aspect of protecting the rights of seniors is to devise a comprehensive governmental policy for the ageing society. The first step in that direction could be a reliable implementation of the Madrid International Plan of Action on Ageing (MIPAA). The Defender monitors the actions in this area conducted by the Ministry of Labour and Social Policy.

The Defender inquired the Minister of Health on his position on actions and plans to improve the system of health care and support to the elderly. In reply, the Minister declared he was aware of the need to introduce new solutions in care of seniors in Poland. In November 2011, the National Health Fund introduced a medical procedure known as "Holistic Geriatric Evaluation". Legislative changes are planned to regulate the health care system in a comprehensive way, to implement medical standards and procedures for the elderly, and to establish a national strategy of the health policy for seniors.

Cases examined by the Defender reveal the existence of practices restricting the use of financial services due to age. The Defender's experience substantiates the thesis that the rights of the elderly need to be strengthened in this particular area. Citizens perceive the lack of access to banking products due to exceeding certain

age as discrimination. Complaints filed to the Defender show that in many cases bank establishments are not adjusted to the needs of the elderly, and the language of bank agreements and information on banking products are incomprehensible. In Defender's view, the need for developing seniors' access to electronic banking is a very important issue as the absence of access to the sphere may result in their exclusion in the future. The Defender will keep monitoring the situation of seniors on the market of banking services, and will take actions to see it improving.

D. Preventing discrimination on the grounds of sex

The year 2011 was particularly important from the point of view of preventing the discrimination of women in public life thanks to the new regulations introduced to the Election Code. The new provisions stipulate that the lists of candidates for the Sejm elections must comprise at least 35% of women and at least 35% of men (the so-called quota system). The purpose of such regulation is to increase the representation of women in the Parliament and to prevent discrimination on the grounds of sex in access to public service. The results of analyses show that in 2011 the percentage of women running for Sejm deputies was almost twice as high (42%) as four years back. Among the people running for the Senate, however, only 14% were women. Yet it seems that the actual problem lies with the place occupied by candidates on the election lists. During the 2011 parliamentary elections, the relation of the percentage of women and men on particular places on election lists was much different in the beginning and at the end of a list. It was equal only starting from the 14th place on the list. In effect, the number of women who became Sejm Deputies of the 6th term increased only by 3% in relation to the number of female Deputies during the 5th term. As a result of the 2011 parliamentary elections to the Sejm, 106 women became Deputies, i.e. 23% of all Deputies. Thus, to actually ensure equal rights of men and women in general elections, it is necessary to promote the good practice of putting equal numbers of candidates of both sexes on top places on the election lists.

As a result of complaints filed to the Defender, she became involved in the problem of differentiating the prices of services offered to the public depending on the sex of the customer (e.g. tickets to football matches, entry tickets to clubs). Each complaint filed to the Defender is examined from the point of view of the principle of equal treatment.

E. Preventing discrimination on the grounds of sexual orientation and gender

The Defender inquired the Minister of Justice on the legal procedure of changing the sex determined at birth. In Defender's view, it is necessary to adopt a comprehensive legal act on transsexual persons. We need a regulation that would allow changing the sex determined at birth on the basis of a transsexual person's declaration supported by opinions of competent physicians, modelled on the solutions applied in the UK. It should also regulate the effects on the family and legal sphere of the transsexual person, changing identity documents, the possibility to reimburse the costs of medical procedures, and introduce a 'lawful excuse' overruling the unlawfulness of such medical procedures. Until such comprehensive regulations are introduced, it is necessary to introduce provisions explicitly regulating gender reassignment to Polish law. The best solution would be to use the possibility to correct the birth certificate as the resolution is issued under non-litigious proceedings.

In her inquiry to the Minister of Labour and Social Policy, the Defender highlighted the need to protect transsexual people on the labour market. To that end, it will be necessary to adopt relevant regulations to oblige former employers to issue new certificates of employment due to changing personal data (given names and surname) by persons whose sex was changed by valid court verdict. Absence of such regulation puts transgender people in an unfavourable situation during the process of applying for a job as they usually have school reports and university diplomas with changed personal data, but certificates of employment with the obsolete personal data. Revealing the earlier identity of a person holding a court verdict on a gender change may give rise to unnecessary conflicts in the workplace (discrimination, mobbing).

The Defender is also aware of the problem that consists in refusing to issue certificates on marital status to certain people who intend to get married abroad. Apart from the data of the person planning to get married, it is also required to state the personal data of the future spouse (e.g. given name, surname and citizenship). In the Defender's opinion, this certificate specimen is contrary to the principle of the democratic state of law, and must be changed. The Defender monitors work on the matter in the Ministry of Interior.

F. Preventing discrimination on the grounds of religion, denomination or beliefs

The Defender continued to examine the case of organising lessons in religions and ethics in schools, and the execution of the verdict of the European Court of Human Rights in Strasbourg in case *Grzelak vs. Poland*. The information received by

the Defender shows that the number of pupils required to organise lessons in ethics (at present it is 7 pupils from one form) is a serious obstacle to the execution of the rights of pupils who would like to have classes in ethics. It seems necessary to reduce the minimum number of pupils to three from one form.

In the Defender's opinion, the lack of people willing to organise classes in ethics may not be justification enough for abandoning the organisation of such classes altogether. If pupils and parents know that the school has no teachers who would be able to teach ethics, they resign from the classes. Knowing that there is no textbook may have a similar deterring effect. Therefore, it is essential to stimulate greater involvement of education authorities in presenting the offer of teaching ethics to parents and pupils. Resigning from participation in ethics classes is also the effect of not knowing that such a class is available in the school's educational offer. Another problem, faced by villages and small towns in particular, is the absence of teachers capable of teaching ethics and organising such classes after school or in a different school (as inter-school groups). It forces pupils who attend classes in ethics to wait a long time or to travel to another school, which is arduous. The problem undoubtedly affects the attendance and the number of pupils willing to attend such classes. Classes in ethics should be organised directly before or after regular classes.

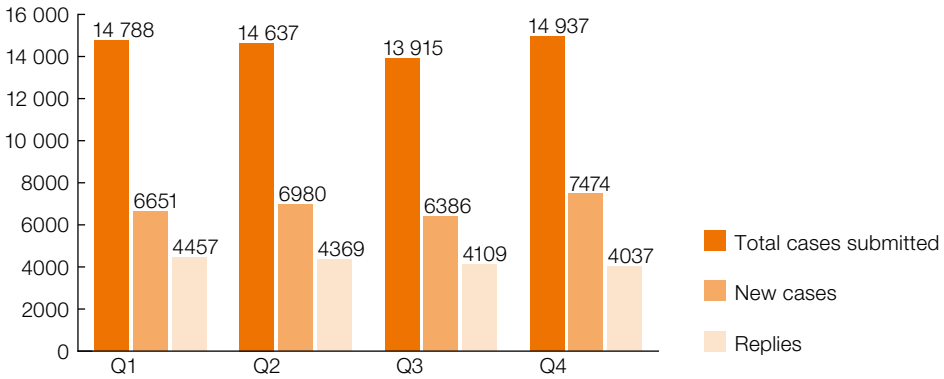
7. Statistical information

Cases submitted to the Office of the Human Rights Defender

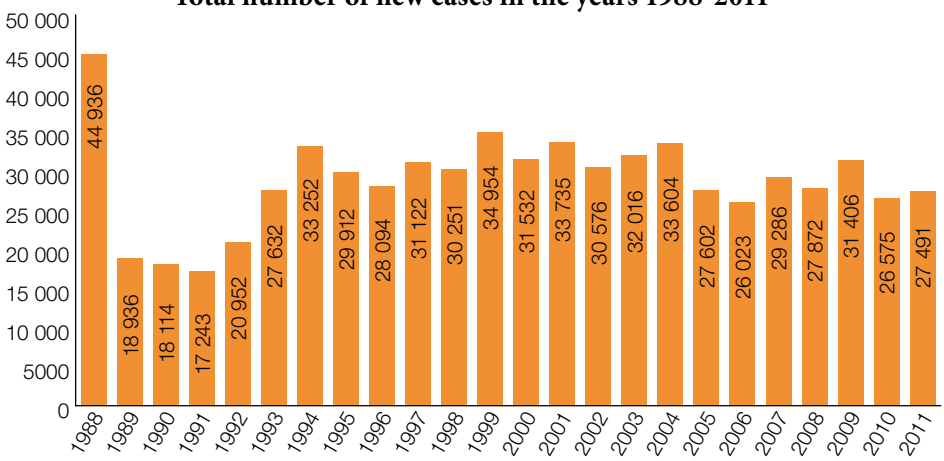
	2010 1.01.-31.12.	2011 1.01.-31.12.	%	Entire operation period of the HRD (1.01.1988-31.12.2011)
Total number of cases received	56,641	58,277	+2.9	1,158,619
Number of new cases	26,575	27,491	+3.4	693,116
Number of replies to the Defender's petitions	19,928	16,972	-14.8	385,845

In 2011, the Office of the HRD received 6,323 applicants and answered 22,783 phone calls, providing advice and information.

Cases submitted to the Office of the HRD in 2011



Total number of new cases in the years 1988-2011

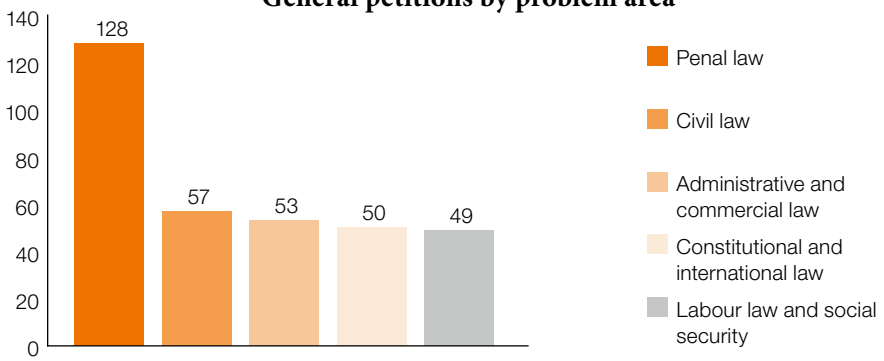


The Human Rights Defender:		2011
1)	made interventions concerning systemic problems – including motions to take a legislative initiative	204 92
2)	submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a higher level act	14
3)	made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	12
4)	addressed juridical questions to the Supreme Court	7
5)	made cassations	78
6)	filed cassation appeals with the Supreme Court in civil cases	1
7)	filed cassation appeals with the Supreme Court in labour cases	1
8)	filed complaints about inconsistency of a valid ruling with the law	1
9)	filed cassation appeals with the Supreme Administrative Court	2
10)	submitted motions to the Supreme Administrative Court for interpretation of regulations	3
11)	filed complaints with Voivodeship Administrative Courts	10
12)	joined court proceedings	6
13)	joined administrative proceedings	4

Of 343 general petitions and special appeal measures made by the Defender in 2011, the majority concerned the following:

Problem area	Number	%
Penal law	128	36.4
Civil law	57	16.2
Administrative and commercial law	53	15.1
Constitutional and international law	50	14.2
Labour law and social security	49	13.9

General petitions by problem area

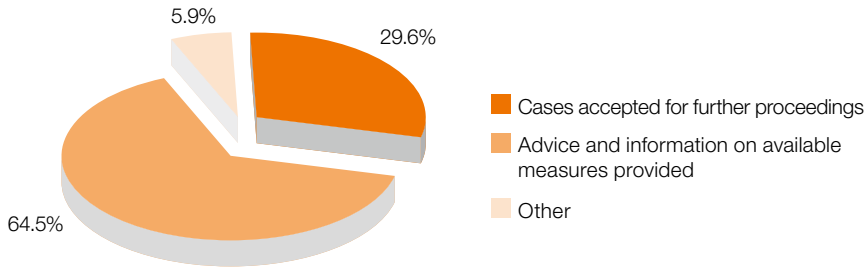


Cases examined in 2011

In the period covered by this Report, 32,343 new cases were examined, of which:

	Manner of investigation		Number	%
1	2		3	4
Cases accepted for further proceedings	1	**Total**	**9,572**	**29.6**
	2	accepted for further proceedings of which: on the initiative of the HRD	8,454 596	26.1
	3	as general petitions	1,118	3.5
Advice and information on available measures provided	4	**Total**	**20,875**	**64.5**
	5	advice and information on available measures provided	20,875	64.5
Other	6	**Total**	**1,896**	**5.9**
	7	complaint referred to a competent authority	477	1.5
	8	complaint returned to be supplemented with necessary information	497	1.5
	9	not accepted for further proceedings [1]	922	2.9
Total			**32,343**	**100.0**

Manner of investigation in 2011



Of 32,343 complaints examined by the HRD, the majority fell mainly within the scope of the following:

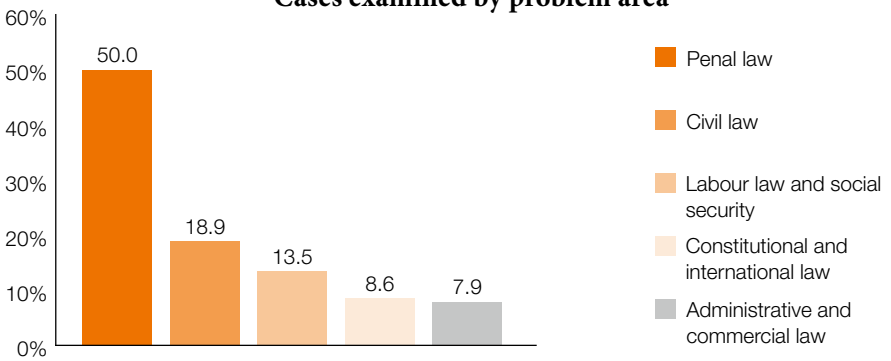
Problem area	Number	%
Penal law	11,374	35.2
Civil law	6,830	21.1
Administrative and commercial law	5,634	17.4
Labour law and social security	4,946	15.3
Constitutional and international law	3,138	9.7
Other	421	1.3

[3] Incomprehensible complaints and letters submitted to other bodies and notified to the Defender.

Of 32,343 complaints examined in 2011, 9,572 were accepted for further proceedings and mainly concerned the following:

Problem area	Number	%
Penal law	4,786	50.0
Civil law	1,809	18.9
Labour law and social security	1,295	13.5
Constitutional and international law	823	8.6
Administrative and commercial law	758	7.9
Other	101	1.1

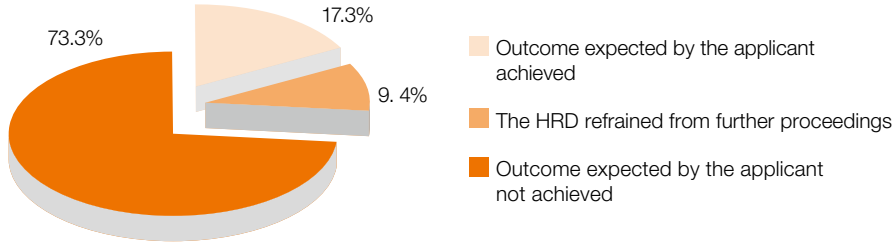
Cases examined by problem area



Proceedings were completed in 9,074 cases undertaken in 2011 and in previous years.

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant and the HRD achieved	1	**Total (2+3)**	**1,572**	**17.3**
	%	Applicant's claims confirmed	1,080	11.9
	3	General petition of the HRD acknowledged	492	5.4
Proceedings discontinued	4	**Total (5+6)**	**856**	**9.4**
	5	Proceedings pending (ongoing procedure)	503	5.5
	6	The HRD refrained from further proceedings (objective reasons)	353	3.9
Outcome expected by the applicant not achieved	7	**Total (8+9+10)**	**6,646**	**73.3**
	8	Applicant's claims not confirmed	6,238	68.8
	9	General petition of the HRD not acknowledged	362	4.0
	10	Measures available to the HRD exhausted	46	0.5
Total			**9,074**	**100.0**

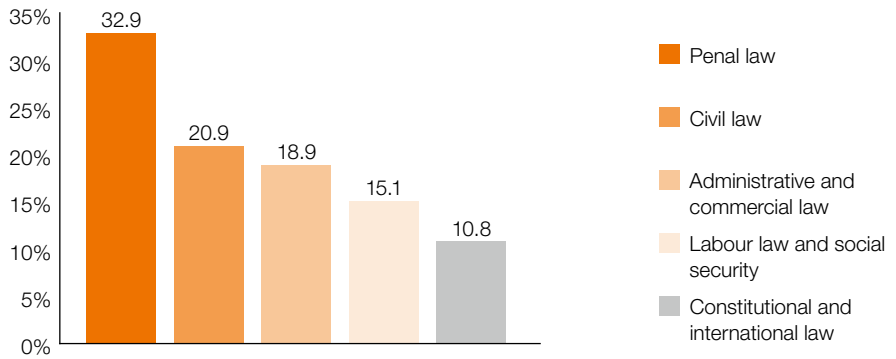
Completion of cases undertaken



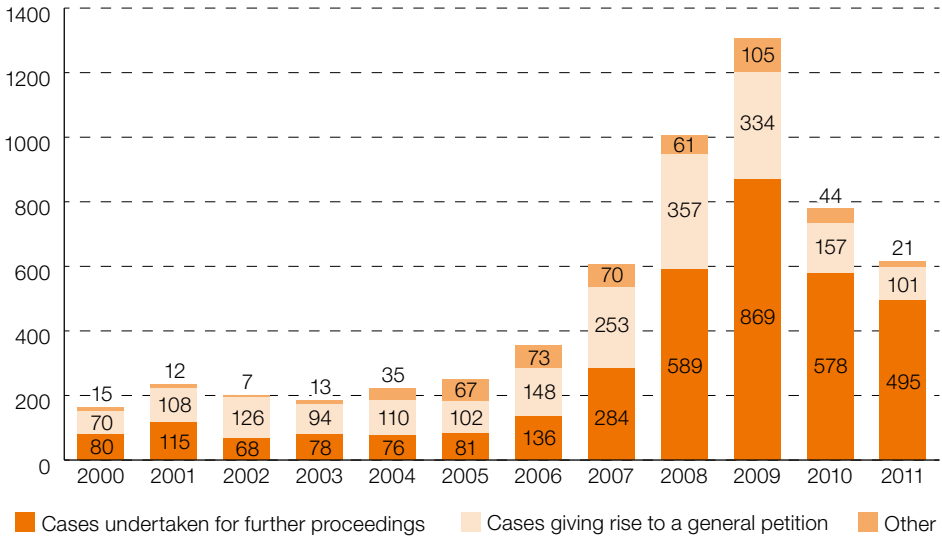
Problem areas targeted by new cases (applications) in 2011

Problem area		Number	%
1	Constitutional and international law	2,965	10.8
2	Penal law	9,051	32.9
3	Labour law and social security	4,161	15.1
4	Civil law	5,757	20.9
5	Administrative and commercial law	5,189	18.9
6	National Preventive Mechanism	154	0.6
7	Other	214	0.8
8	**Total**	**27,491**	**100.0**

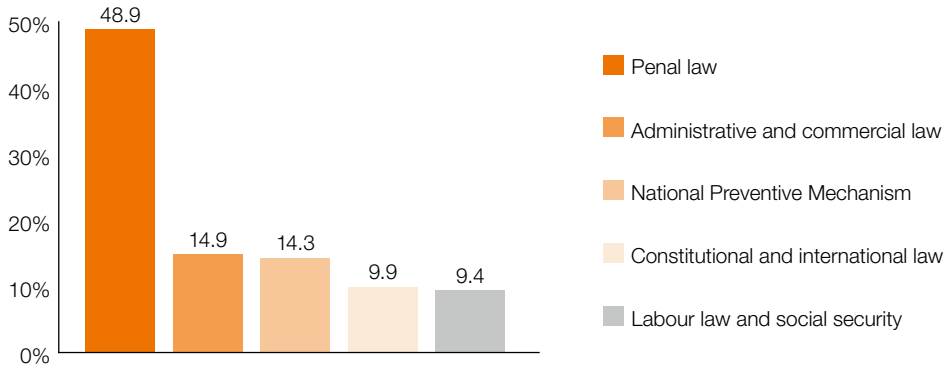
Major problem areas targeted by new cases in 2011



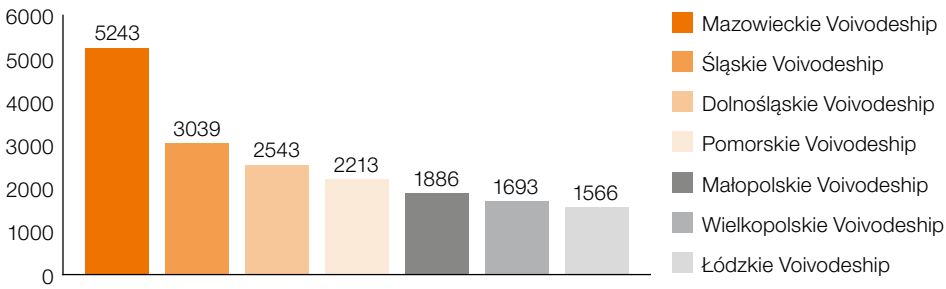
Cases initiated by the HRD



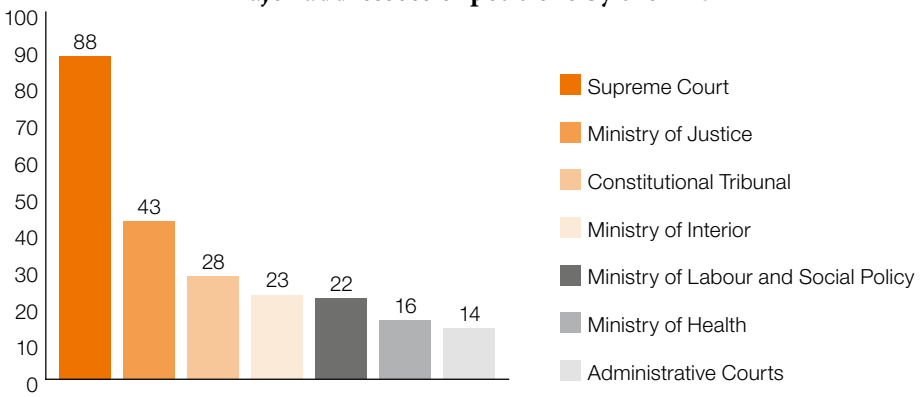
Cases initiated by the HRD by problem area



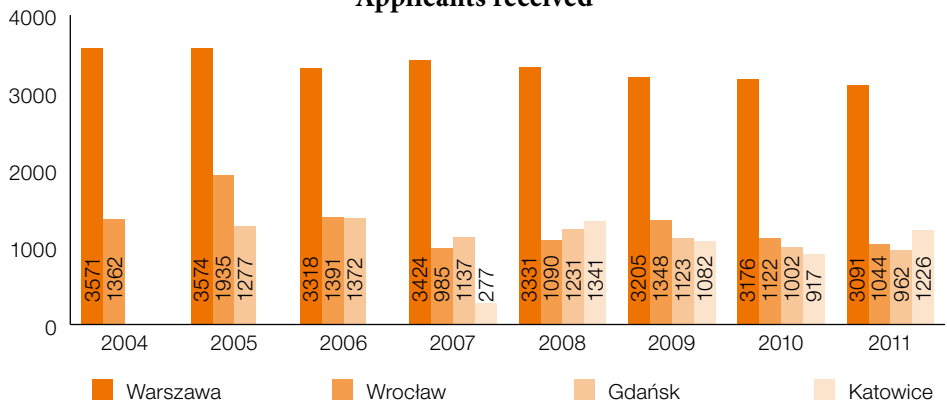
Greatest number of new cases by particular Voivodeships



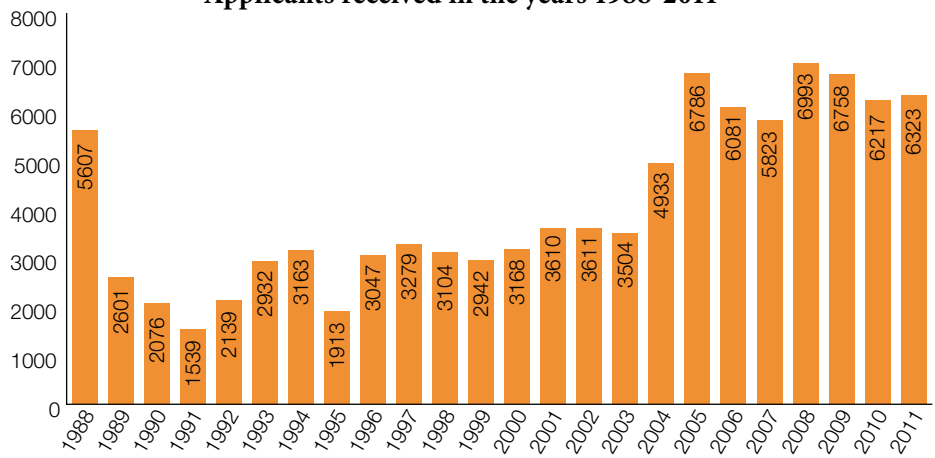
Major addressees of petitions by the HRD



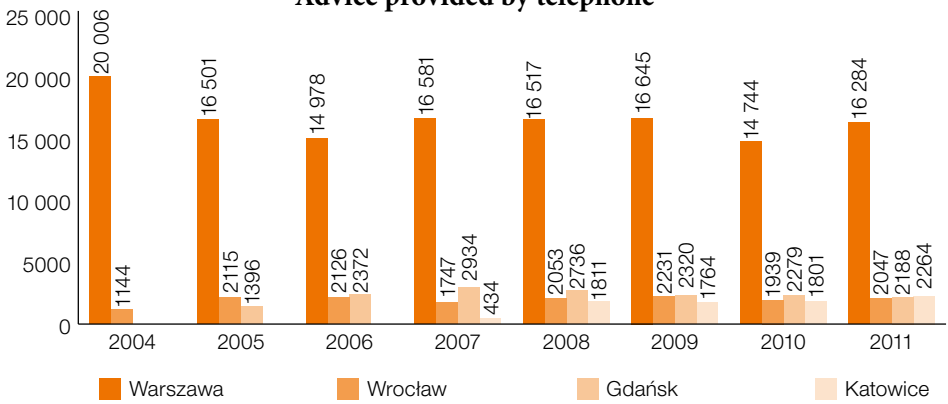
Applicants received



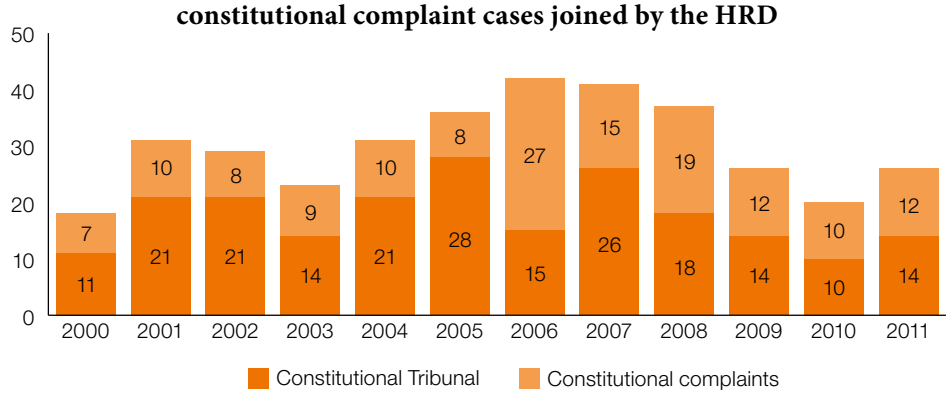
Applicants received in the years 1988-2011



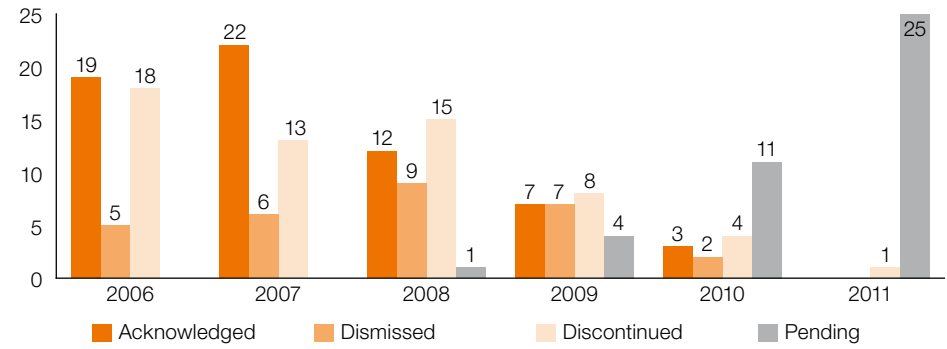
Advice provided by telephone



Motions to the Constitutional Tribunal and proceedings in constitutional complaint cases joined by the HRD

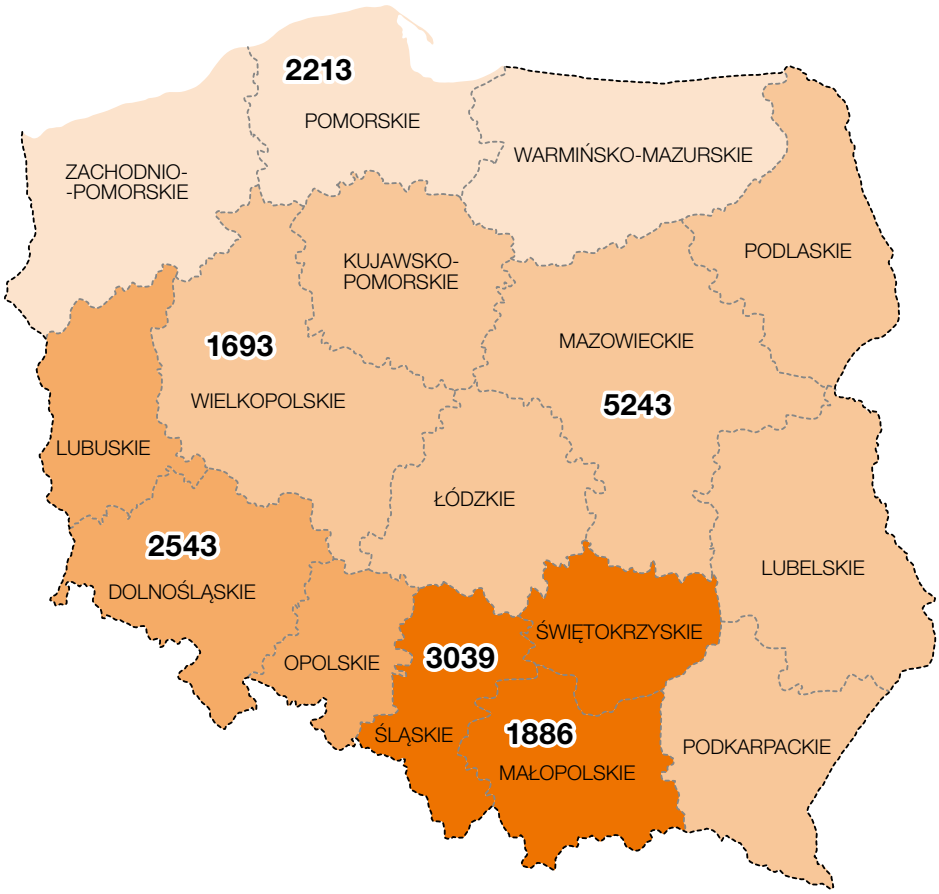


Decisions of the Constitutional Tribunal on motions to declare the regulations incompatible with the Constitution and on proceedings in constitutional complaint cases joined by the HRD[4]

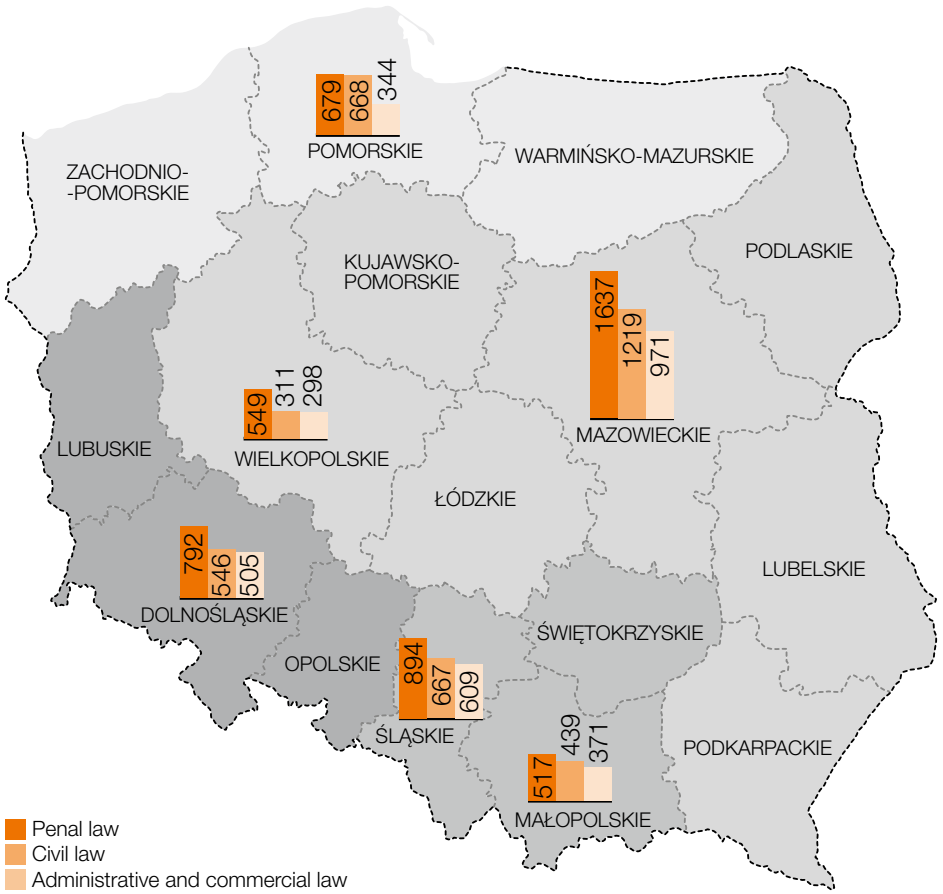


[4] As at 31 December 2011.

The largest number of new cases by particular Voivodeships in 2011



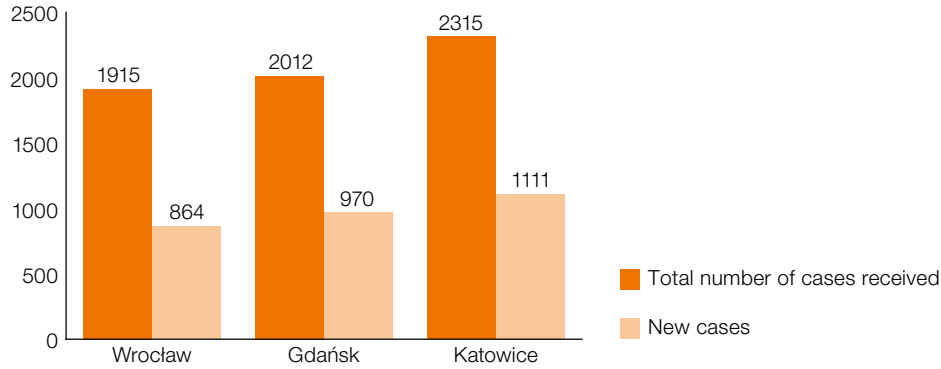
Major problem areas targeted by new cases in Voivodeships with the greatest number of new cases in 2011



Offices of Field Plenipotentiaries

Office of Field Plenipotentiary in Wrocław, established on 2 August 2004
Office of Field Plenipotentiary in Gdańsk, established on 16 May 2005
Office of Field Plenipotentiary in Katowice, established on 14 September 2007
Office of the HRD in Warsaw

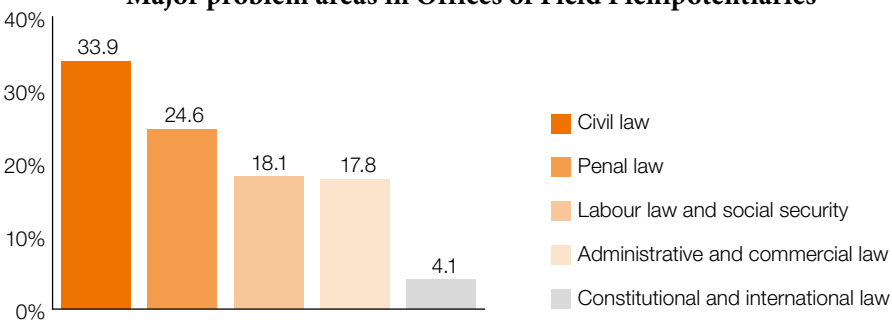
Cases received by Offices of Field Plenipotentiaries



The majority of new motions filed with Offices of Field Plenipotentiaries concerned the following:

Problem area	Number	%
Civil law	998	33.9
Penal law	726	24.6
Labour law and social security	533	18.1
Administrative and commercial law	523	17.8
Constitutional and international law	122	4.1

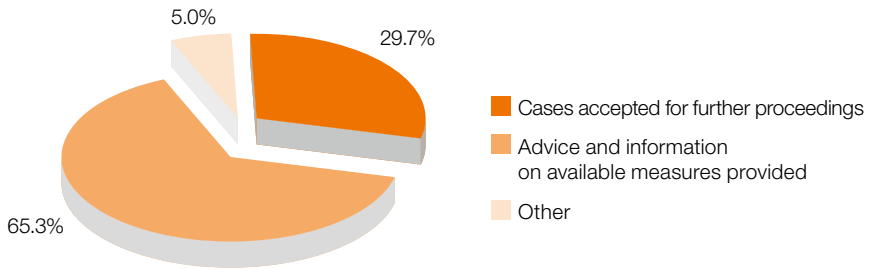
Major problem areas in Offices of Field Plenipotentiaries



During the period covered by this Report, 3,256 new cases were examined by Offices of Field Plenipotentiaries, of which:

Manner of investigation	Number	%
– Cases accepted for further proceedings	966	29.7
– Advice and information on available measures provided	2,128	65.3
– Complaint referred to a competent authority	82	2.5
– Complaint returned to be supplemented with necessary information	28	0.9
– Not accepted for further proceedings[5]	52	1.6

Manner of investigation by Offices of Field Plenipotentiaries

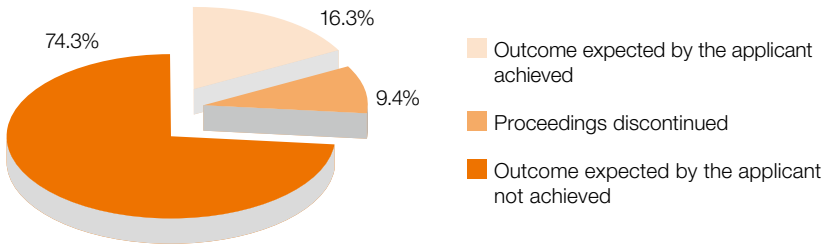


[5] Incomprehensible complaints and letters submitted to other bodies and notified to the Defender.

Offices of Field Plenipotentiaries completed proceedings in 871 cases undertaken in 2011 and in previous years.

Results		Manner of completion	Number	%
1		2	3	4
Outcome expected by the applicant achieved	1	**Total (2+3)**	**142**	**16.3**
	2	Applicant's claims confirmed	126	14.5
	3	General petition of the HRD acknowledged	16	1.8
Proceedings discontinued	4	**Total (5+6)**	**82**	**9.4**
	5	Proceedings pending (ongoing procedure)	49	5.6
	6	The HRD refrained from further proceedings (objective reasons)	33	3.8
Outcome expected by the applicant not achieved	7	**Total (8+9+10)**	**647**	**74.3**
	8	Applicant's claims not confirmed	605	69.5
	9	General petition of the HRD not acknowledged	12	1.4
	10	Measures available to the HRD exhausted	30	3.4
Total			**871**	**100.0**

Completion of cases undertaken by Offices of Field Plenipotentiaries



civic helpline

800 676 676

HUMAN RIGHTS DEFENDER (OMBUDSMAN)

We are at your disposal

The Human Rights Defender (Ombudsman) launched a special helpline for Citizens who would like to **receive information** or file a complaint. Comments on the functioning of the Polish legal system and public institutions are also welcome.

We want to make communication with us as easy as possible, so that Citizens **know their rights** and the Defender has up-to-date information on the threats and instances of breaching citizens' rights.

CIVIC HELPLINE

Call us!

HUMAN RIGHTS DEFENDER