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**Summary of Report on the Activity
of the Ombudsman in Poland in 2012 with Remarks
on the Observance of Human and Civil Rights and Freedoms**

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SUMMARY

of the Report on the Activity
OF THE OMBUDSMAN
IN POLAND

in 2012

with Remarks
on the Observance
of Human and Civil
Rights and Freedoms

Full text of the “Report on the Activity of the Human Rights Defender
in 2012...” is available in Polish on www.rpo.gov.pl

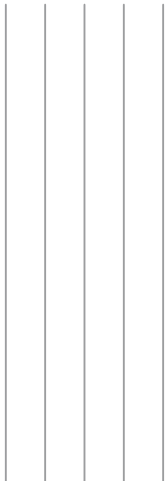


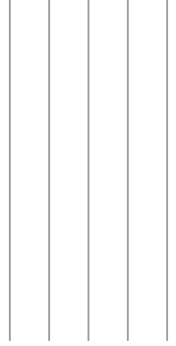


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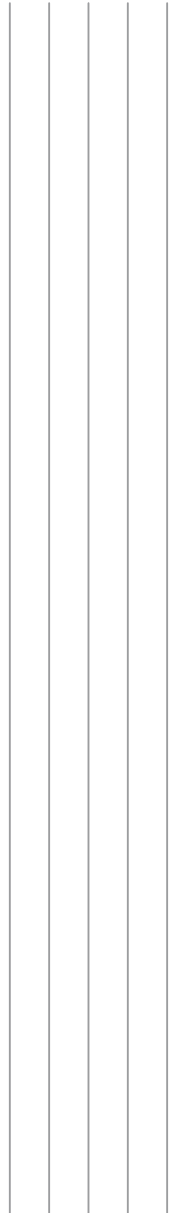
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Introduction





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. Applications filed to the Defender are free of charge and do not require any particular form. In view of a broad legal basis and the absence of formal requirements or financial barriers, the Defender receives numerous applications: in 2012 she received 62,400 (7.1% more than in 2011), of which 28,884 applications concerned new cases (5.1% more than in 2011). The majority of applications concerned penal law (34.1%), civil law (19.8%), and administrative and commercial law (16.4%).

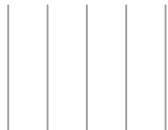
The Defender can also act on her own initiative, *inter alia*, following an analysis of media reports. The Defender also took up cases *ex officio* upon receiving notifications on the so-called extraordinary events involving public officials (e.g. from prisons, pre-trial detention centres, Police). In 2012, 527 cases were examined on the Defender's own initiative (of which 120 took the form of a general petition).

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, 32,224 cases were examined, of which 9,572 cases 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 18,882 cases, the applicants were advised of the measures they could take; in 652 cases the applicants were requested to supplement their applications, whereas 529 cases were referred to the competent authorities. A high number of cases where the applicants were advised on the available measures shows that the knowledge of the law is still insufficient among Polish citizens. It also proves that there is no universal system of legal advice or legal information. This is why so many people who address the Defender expect to obtain information on how and where to turn to have their problems solved rather than to have their rights protected.

In 2012, the staff of the Defender's Office talked to 6,251 people personally (including 3,054 persons who visited the Offices of Local Representatives and Customer Service Points). Attempting to meet the expectations and needs of citizens, the Defender established Customer Service Points in Wałbrzych, Częstochowa, Krakow, Olsztyn, Lublin, Kielce and Bydgoszcz (the latter was established in 2012). The Points are run by the staff of Local Representatives Offices as well as of the Defender's Office in Warsaw. Furthermore, in 2012 the staff of the Office of the Human Rights Defender answered 29,633 phone calls to provide explanations and legal advice. In April 2012, a free Helpline of the Human Rights Defender was launched, available to everybody, with the aim to provide basic information on human rights and the Defender's competence.

Within the period covered by the Report, the Defender addressed 292 petitions concerning specific problems to competent authorities. The Defender used this way





of highlighting breaches of rights or freedoms of the individual when the cases she examined showed that the application of the law in a way resulting in such breaches was becoming widespread, and when the analysis of complaints lodged to the Defender proved that the source of breaches of individuals' rights was the law itself. As regards the latter, in 2012 the Human Rights Defender lodged 151 petitions for a legislative initiative. Irrespective of the above, the Defender exercised her right to challenge a faulty normative act in force. In 2012, the Human Rights Defender addressed 19 petitions to the Constitutional Tribunal to verify normative acts for their compliance with superior regulations or with the Constitution. The Defender also joined 12 proceedings instituted before the Tribunal as a result of a constitutional complaint.

In the relations with the judiciary, the legal inquiries of the Defender referred to extended adjudication panels are of particular importance. The inquiries are intended to make court decisions uniform, and as such they constitute a remedy aimed at protecting the principle of equality before the law. In practice, inconsistent interpretation of the law by the courts leads to infringement of the principle of equality before the law. In connection with the divergences found in the case law of common courts, the Human Rights Defender addressed six legal inquiries to be resolved by the extended adjudication panel of the Supreme Court in 2012. Divergences in the case law of administrative courts inspired the Human Rights Defender to address two legal inquiries to be resolved by the extended adjudication panel of the Supreme Administrative Court.

As to individual cases examined by courts, the Defender lodged to the Supreme Court 46 cassation appeals against legally binding decisions of the common courts. In administrative cases, the Defender lodged 23 cassation appeals to Voivodeship Administrative Courts (including complaints about the provisions of local law), and two cassation appeals to the Supreme Administrative Court.

2012 was the fifth year when the Human Rights Defender acted in the capacity of the National Preventive Mechanism – a body that carries out preventive visits to places of detention. The operation of the Mechanism was carried out by the National Preventive Mechanism Department, a part of the Defender's Office's organisational structure. By the end of the year, the Department consisted of 13 people employed at 12 FTEs. The visits made in the framework of the National Preventive Mechanism were also supported by the employees of Local Representatives' Offices in Gdańsk, Wrocław and Katowice. From February 2012 on, the visits of the National Preventive Mechanism have been interdisciplinary – the visiting teams have consisted also of external experts: psychiatrists and clinical psychologists.

The visits carried out under the National Preventive Mechanism must be regular, namely they must take place at adequate intervals. In Poland, there are about 1,800 establishments covered by the visits. In 2012, the Defender carried out 121 visits when performing the tasks of the National Preventive Mechanism. Compared to 2011, when 89 visits were carried out, the intensity of actions taken in the framework of the Mech-



anism increased. The increase in the number of visits was possible mainly thanks to granting the Defender more funds for that purpose from the budget. However, the intensity of the visits remains insufficient to describe them as regular and to state that the standard resulting from international agreements has been attained.

2012 was another year when the Defender performed the tasks she was entrusted with pursuant to the Act on the implementation of some regulations of European Union regarding equal treatment.¹ 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. The Act also entrusted the Defender with new tasks, which include, but are not limited to, analyses, monitoring and support of equal treatment; independent studies on discrimination, drafting and publishing independent reports on discrimination. As the second year when the Defender acted as the independent equality body, 2012 was also the first period of activity for which the Parliament allocated budget funding which made it possible, *inter alia*, to commence social research in the field of equal treatment, the results of which are used to formulate the recommendations of the Defender, and to take other actions to ensure effective protection of citizens against violations of the principle of equal treatment. Continuing the actions and financing them in subsequent years will allow continuity of work to ensure equal treatment in our country.

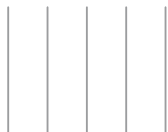
In the second year when the Defender performed the tasks that concern equal treatment, two reports were published from the series *The Equal Treatment Principle – Law and Practice*, namely: *Guarantees of Exercising Voting Rights by Seniors and by Disabled Persons. Analysis and Recommendations* and *Equal Opportunities in Access to Education of Persons with Disabilities. Analysis and Recommendations*. In the framework of performing the tasks related to exercising the function of the independent equality body, the Defender also commissioned several social studies.

The Defender also implemented diverse educational and social measures in the field of equal treatment. The activity of public institutions in the area of ensuring compliance with the equal treatment principle was monitored regularly. Also the case law of Polish and international courts in the area of equal treatment was monitored on an ongoing basis.

As Poland ratified the Convention on the Rights of Persons with Disabilities, the Defender was designated as the independent body that protects and monitors implementation of the said Convention.

The Defender cooperates with associations, citizens' movements, associations and foundations acting for the protection of freedom as well as human and civil rights. In the framework of such cooperation, the Office of the HRD organised about 50 meetings and conferences, attended by ca. 1,500 people in person, and followed on-line by close to 20,000 people. The meetings were devoted primarily to the Defender's priori-

¹ Act of 3 December 2010 (Dz. U. No 254, item 1700).





ties, i.e. the protection of the rights of the elderly and the disabled. As 2012 was the European Year for Active Ageing and Solidarity between Generations, the Office of the Human Rights Defender organised trainings on the rights of seniors and their active role in the society. In 2012, the 1st Senior Congress was organised in Chorzów, during which, *inter alia*, the issue of solving intergenerational conflicts was discussed.

The Office of the HRD answered about 780 inquiries from journalists with a view to disseminate information on the Defender's competence and activity. Information on the Defender was featured in press, on the radio, TV and the Internet, and was included in about 3,700 publications. In addition, the Defender was interviewed for the press, radio and TV. At the request of the President of the Republic of Poland, the Defender handled the issue that gave rise to particularly heated debates in 2012, namely ACTA. The Defender came up with the idea to organise social panels and citizen debates on the issue in universities throughout Poland.

Social and educational activity of the Defender in 2012 was extremely rich and universal. A number of meetings and debates were organised that concerned important problems raised by the citizens and NGOs (such as the functioning of the elderly on the financial market, the programme for supporting children suffering the consequences of traffic accidents, financing the education of persons with disabilities, friendly interrogation of children, the situation of the homeless). Two Jan Nowak-Jeziorański Debates devoted to the contemporary understanding of notions such as freedom and democracy were held with the participation of distinguished scientists and NGO representatives. In 2012, the Office of the HRD initiated and co-organised the 1st Bureaucratic Language Congress and the campaign "Citizen-friendly bureaucratic language." In addition, the Office of the HRD conducted trainings for Sejm Deputies' and Senators' assistants, and judges on human rights on the competence of the HRD. The educational activity was supplemented by numerous publications, brochures and informational leaflets, also in foreign languages, distributed in different circles. In sum, 18 bulletins were published in a total of 18,000 copies.

There are three Expert Committees of the Defender: on Elderly People, on People with Disabilities and on Migrants. Their task is to provide substantive support for the actions taken by the Departments of the Office of the Human Rights Defender, *inter alia* by proposing the priorities of activities and providing opinions on current public debates. The committees are to support the Defender in the performance of her tasks, particularly in the area of equal treatment on grounds of age, disability, sex, nationality, ethnic origin, and faith.

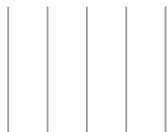
In recognition of her commitment to promoting and strengthening human and civil rights on international arena, the Defender was re-elected, during the 10th Congress of the International Ombudsman Institute in Wellington, a member of the European Board of the International Ombudsman Institute (IOI), which has 76 representatives, and of the World Board of the IOI that manages the work of the organization.



As far as the international activity of the Defender is concerned, she continued the implementation of the project under the Eastern Partnership of the European Union. In 2012, two ventures were undertaken. The first one was a seminar organised in Paris² which addressed issues such as ethics in the field of security, protection of the rights of children, customer relations, communication with institutions, mediation in health care, discrimination, and promoting equality. Another edition of the seminar³ was organised by the Office of the HRD in Warsaw. The seminar covered the following topics: protection of children's rights in criminal and civil law, the relationship between the Ombudsman and the judiciary, including cooperation with the Supreme Court and the Constitutional Tribunal, the rights of seniors and people with disabilities in the labour law. Furthermore, the National Preventive Mechanism representatives took active part in thematic workshops of national mechanisms, organised by the Council of Europe.

² On 9-11 May 2012.

³ On 25-27 September 2012.





1. Major issues concerning constitutional and international law





A. Right to good legislation

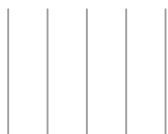
The legislative process, perceived primarily through the actions of the legislative authority, requires an in-depth reform. In 2012, the Defender continued monitoring irregularities within the legislative process, including undischarged authorisations to issue implementing regulations by government administration bodies, delays in implementing EU law, and improper execution of verdicts of international courts and of the Constitutional Tribunal. In the Defender's view, negligence in the above areas seriously affect the level of protection of rights and freedoms in Poland.

The Defender has voiced many doubts as to the compliance of certain provisions with the Constitution. The problem concerns all fields of law, and the Defender's experience shows that the situation is not improving. An example to prove that the problem actually exists is the fact that some signalling decisions or Constitutional Tribunal verdicts have not been implemented yet. It should be noted that these cases often concern issues relevant from the point of view of the rights and freedoms of individual, such as the system of grading, classifying and promoting pupils, and conducting tests and external examinations, including secondary school-leaving examinations, or the previously unregulated problem of fees for sobering-up stations.

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 a legally established order, certainty of legal transactions, and 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. Too short periods between the adoption of an act and its entry into force were problematic in the case of, for example, acts on taxes (on excise tax and personal income tax).

Defective legislation, resulting in the need to urgently amend a legal act before its entry into force or shortly thereafter, as well as legislative omissions and negligence, represent a problem of particular concern. Such problems have been identified, *inter alia*, as regards regulations concerning the situation of patients and the functioning of health care (for example, the need for changes in the therapeutic activity of non-profit organizations, including church entities; the need for changes in the obligatory insurance of hospitals against medical malpractice; and in relation to the absence of a legal norm that would impose an obligation on hospitals to provide patients with accommodation and meals; and the absence of geriatricians in the list of doctors authorised to issue orders for certain orthopaedic and auxiliary aids).

Frequently, regulations are introduced that impose very restrictive, but objectively difficult to fulfil, obligations on citizens. Provisions on the application of administrative penalties and fees, e.g. the fees for the recycling of end-of-life vehicles, are a good example of such inadequate legislation. A uniform jurisprudence, which ensures interpretation of provisions in compliance with the Constitution, started to form only





at the stage of examining cassation appeals by the Supreme Administrative Court, in which the Ombudsman accessed the proceedings.

Finally, it should be noted that also failure to issue an act may result in violating the rights of an individual. This applies to broadly understood re-privatisation. Absence of the re-privatisation act resulted in a situation where, at present, the so-called “small re-privatisation” is carried out, that consists in challenging administrative decisions on expropriation and nationalisation, issued in the past in civil proceedings. Such proceedings are usually lengthy, and sometimes they finally result in violating the interests of third parties (e.g. the tenants in buildings that are being returned to their owners).

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

The Defender addressed the Minister of Justice, requesting him to specify the criteria on the basis of which courts are to be reorganised in relation to the assumptions for the draft Ordinance on the liquidation of certain district courts, establishing local divisions of some district courts, and amending the Ordinance on the courts of appeal, regional courts and district courts, and establishing their seats and jurisdictions. The contents of complaints filed to the Defender show that the draft Ordinance has not been adequately consulted with local communities and local governments, and that the liquidation of some courts is not justified by economic or substantive considerations. The complainants are also concerned about the liquidation of land and mortgage register divisions, and about related difficulties in accessing the registers. From the response of the Minister, it appears that the amendments are intended to adjust Polish courts to the standard in place in other European Union countries, and will be implemented in accordance with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the Minister, inadequate allocation of resources and flawed organizational structure of common courts hinder making full use of existing human resources, following the principle of getting the best results from available resources, in a manner permitting timely execution of tasks.

The Defender continued to monitor the implementation of her recommendations on clear regulation, by an act, of the possibility to record the course of civil proceedings by the parties. The complaints from persons who wished to record court sessions revealed that presiding judges frequently refused. In this situation, the parties resort to recording session while not informing the presiding judge of doing so. Therefore, the Defender again petitioned the Minister of Justice to consider undertaking a relevant legislative initiative. The Minister presented a proposal to introduce a provision into the Code of Civil Procedure, stating that a party would be entitled to record court

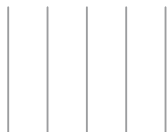


sessions upon the court's consent, provided that would not be contrary to the correctness of proceedings. The above would apply to audio recordings only, whereas making video recordings would not be allowed.

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

The complaints examined by the Defender revealed that a problem exists related to the provision of the Penal Code that penalises defamation. The Defender requested the Constitutional Tribunal to declare that the words “or deprivation of liberty for up to a year”, contained in the above-mentioned provision of the Criminal Code, violate the constitutional freedom of expression and of acquisition and dissemination of information, in view of the principle of statutory exclusivity of restrictions in exercising constitutional freedoms and rights; the said words also violate the freedom of expression provided for in the Convention for the Protection of the Rights human Rights and Fundamental Freedoms. In the opinion of the Defender, the possibility to sentence a person to imprisonment for defamation is disproportionate and thus unacceptable because of its intensity and severity, both on the basis of the Constitution and the Convention, while at the same time there are no grounds for leaving deprivation of liberty as one of the possible penalties for defamation. In her request, the Defender invoked the rich jurisprudence of the European Court of Human Rights, which shows that the possibility to sentence a person to imprisonment is acceptable in view of the standards set out in the cited provision of the Convention only in the most severe of cases, such as when the words incite to hatred and violence; a sanction of this kind for offenses that consist in defamation, appears to be disproportionate, and thus inadmissible under the Convention due to its excessive intensity. As in the Polish law the responsibility for one's words in the most severe cases is provided for under other criminal regulations, there are no grounds for leaving imprisonment in the system of penalties for defamation. In this state of affairs, the challenged provision of the Penal Code can not pass the proportionality test, provided for both in the Convention and in the Constitution. The case is pending before the Constitutional Tribunal.

The Office of the HRD received complaints about the practice of public administration authorities, related to the obligation to provide information on their activity. The Defender inquired the Minister of Administration and Digitization on the statutory exception in access to public information that provides for abandoning the principle of providing information free of charge. It seems necessary to introduce a regulation which would define “additional costs” in detail and would allow control over the decisions taken by the authorities in the matter. The Minister replied that the irregularity pointed out by the Defender would be eliminated when the said act is amended.





The Defender also addressed the First President of the Supreme Court on the issue of access to public information. She praised the actions taken to-date by the Supreme Court in this regard, in particular publishing the collection of verdicts. Yet, in a time when the information society is forming, the Court's actions were insufficient. The situation where verdicts were only provided by major legal search systems for a fee gave rise to protests. The President of the Supreme Court declared that the problem would be solved once and for all when an on-line database of Supreme Court verdicts is established. The database was launched on 22 October 2012.

D. Right to education

The Defender addressed the Minister of National Education on the numerous cases of closing down kindergartens and public schools, stating that it may affect the actual accessibility of such establishments, and thus the execution of the right to universal access to education. The Minister replied that the Ministry had no influence over the decisions of the bodies running the establishments, also decisions on closing down schools, while in the majority of cases the establishments were in fact reorganised, not closed down.

An important problem, highlighted by pupils' parents and by teachers working in public educational establishments, consisted in the fact that, increasingly frequently, running kindergartens and schools was passed on to private entities or to municipal companies. In her address to the Minister of National Education, the Defender pointed out that such a solution constituted a threat to providing education that is available to all and free. The Minister shared the Defender's position, and expressed an opinion that the activities in question constituted a violation of the Act on the educational system.

The Defender received many reports on liquidating kitchens in kindergartens and in public schools. Such a solution may affect the health and development of pupils. The Defender also pointed out that the meals provided by catering companies are more expensive than those cooked in the premises, which will force many families to resign from school lunches for children. The Minister replied that local government units have no obligation to finance school kitchens, as they are a "bonus" that depends on the financial situation and availability of facilities, which are not always sufficient.

Many complaints concerned the organisation of teaching and care in public kindergartens. In many gminas, during enrolment at kindergartens and public schools, priority is given to children that would spend at least 7-8 hours in the establishment. The Defender highlighted that these rules of enrolment at kindergartens benefited primarily well-off families (which can afford paying for their children's extramural activities). In many cases, the availability of kindergartens also depends on the prosperity of the gmina where a given child lives. In her address to the Minister of National



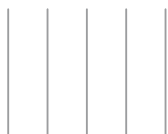
Education, the Defender emphasised that such a solution was in breach of the constitutional guarantee of equal access to education. The Ministry has undertaken efforts to define the extent and possibilities of supporting gminas in the implementation of their tasks that concern kindergarten education.

In addition, as pointed out by the Defender in another address, the children who attend year-long compulsory kindergarten classes are not provided free care after such compulsory classes are over, which may constitute a breach of the constitutional principle of free education. The Minister of National Education explained that compulsory kindergarten classes are held in the framework of kindergarten education, not school education, which means that children are entitled to free classes of at least 5 hours a day, while classes for which fees are charged are offered after the free classes. The Ministry is working to define the extent and possibilities of providing financial support to gminas for the performance of tasks related to kindergarten education, which would be conducive to reducing the costs incurred by parents.

The legal status of adult pupils is unclear due to doubts as to the interpretation of the provisions of the Act on the education system. Based on the interpretations of the Ministry of National Education, some schools grant adult pupils the rights of adults depending on whether they are dependent on their parents. Such a solution may constitute a violation of the constitutional principle of equality before the law. The Ministry explained that it was analysing the provisions that define the rights and obligations of pupils who attend schools for the youth in order to determine the extent of the necessary changes and subsequently work out proposals of legislative changes to the law on education that would eliminate such doubts.

The Defender has repeatedly highlighted systemic irregularities related to enrolment at kindergartens, including the processing of personal data of children and their parents, grading, classification and promoting pupils, as well as conducting tests and examinations. As none of the above problems has been solved, the Defender submitted two applications to the Constitutional Tribunal, concerning incompliance of the provisions of the Act on the education system with the principle of structuring statutory competences, inscribed in the Constitution. The applications concerned enrolment at kindergartens and schools, the basis for processing personal data for the needs of the enrolment process, the terms and manner of grading, classification and promotion of pupils, and of conducting tests and examinations. In the first case, in its verdict of 13 January 2013, the Constitutional Tribunal shared all the doubts of the Defender, while the second application is pending.

The Defender applied to the Constitutional Tribunal for the verification of the compliance with the Constitution of certain provisions of the Act – Higher Education Law on scholarships for academic merit. The current student scholarship system allows granting scholarships to students who study at two faculties, with the exception of the rector's scholarship when pursuing supplementary Master's studies. The challenged provision allows granting a scholarship for the second field of study pursued





after obtaining the first diploma, also in a situation where the student was not granted a scholarship for the first field of study. Despite an earlier petition of the Defender on this issue addressed to the Minister of Science and Higher Education, no agreement had been reached and, therefore, the Defender resorted to submitting an application to the Constitutional Tribunal. The case is pending.

The Defender inquired the Minister of Science and Higher Education on the provisions on suspending a university rector. Pursuant to the provisions of the Act – Higher Education Law, suspending a rector is obligatory if penal proceedings are instituted against him/her for an indictable offence, regardless of the duration or reasons of the proceedings. The provisions do not provide for an appeal or a possibility to revoke the suspension before the penal proceedings are finalised. The Minister of Science and Higher Education shared the Defender's doubts and declared she would consider relevant legislative steps.

The Defender pointed out that the Minister of Science and Higher Education failed to execute her obligatory statutory authorisation to issue an ordinance on financing non-public universities. In effect, the universities do not receive the financial support they are guaranteed by the act. However, the Minister believes there is no need to issue such an implementing act. The case is monitored by the Defender.

E. Electoral Law

The Defender petitioned the Head of the State Electoral Committee on the absence of mechanisms to control the decisions refusing to issue certificates authorising electoral committees to submit lists of candidates in subsequent constituencies without the need to collect the signatures of voters who support the lists. The Head of the Committee replied that the State Electoral Committee was not entitled to take any legislative actions. Therefore, the Defender petitioned the President of the Republic of Poland to consider taking a relevant legislative initiative for amending the Election Code. The case is monitored by the Defender.

2. Major issues concerning penal law



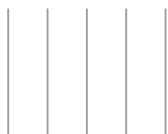
A. Lack or limited recourse to law

In her petition to the Minister of Justice, the Defender pointed out certain problems relating to the absence of justifications for decisions on refusing to initiate, on suspending or on discontinuing investigation. In the Defender's opinion, the possibility of not drafting justifications of the above decisions resulting from the Code of Penal Procedure makes the right of parties to proceedings to lodge an appeal only illusory. The right to file a complaint, especially against a decision on refusing to initiate or on discontinuing investigation, is an important right allowing persons who fell victim to an offence to influence the result of penal proceedings conducted upon their notification. Restricting the said right, by allowing not to provide a justification of trial decisions that end investigation (or refuse initiating investigation), is, therefore, a very serious limitation of the rights of crime victims at the initial stage of penal proceedings. The Minister did not share the Defender's view that it was necessary to start legislative work aimed at amending the norms in this respect.

The Defender petitioned the Minister of Justice on the admissibility of prosecutors applying for refusal to issue or for cancelling a passport document, pursuant to the Act on passport documents, in the course of preparatory proceedings. According to the Defender, refusal to issue or cancellation of a passport document at the request of the authority conducting the preparatory proceedings, which did not elect to apply a preventive measure in the form of a prohibition to leave the country pursuant to the Code of Penal Procedure, is a circumvention of the provisions governing the use of a preventive measure, and it deprives the suspect of, inter alia, the right to have the trial decision on its application subject to substantive court review. The case is monitored by the Defender.

B. Right to defence

Joining a constitutional complaint, the Defender presented her position that the legal regulation contained in the Code of Penal Procedure, to the extent to which it does not guarantee a party or his/her defence counsel or representative the right to attend a court hearing during which an appeal against a decision on the application of coercive means other than detention and temporary arrest is examined, is incompatible with the constitutional principle of the democratic rule of law, the principle of equality before the law, the right to defence, and the right to fair and public trial without undue delay by a competent, independent and impartial court. The challenged provisions do not guarantee a person against whom coercive measures, characterized by a high degree of repression and restriction of constitutional rights and freedoms, are used the right to participate in the court hearing during which the appeal against the use of such measures is examined, nor do they ensure any other form of being heard by the court, thus





making it impossible to present own claims and evidence to support these claims, or to verify the claims of the other party. Therefore, the provisions are contrary to the constitutional right to defence and the right to a trial. The challenged regulation also breaches the principle of equality enshrined in the Constitution by introducing unjustified differences between entities in identical legal situation, as the possibility of the entities to exercise their constitutional rights depends solely on an arbitrary decision of the court of appeals. The case is pending before the Constitutional Tribunal.

The Defender petitioned the Constitutional Tribunal on the rules of communication between a person under temporary arrest and his/her defence counsel. The Court granted the application in the part that concerned the right to defence, and ruled that the provision of the Code of Penal Procedure which allows the prosecutor to impose control of mail between the counsel and the suspect, as it does not indicate the grounds which would entitle the prosecutor to the above, was inconsistent with the constitutional right to defence in view of the principle of exclusivity of the statutory regulation of the rights and obligations of citizens. The Tribunal shared the Defender's charges and highlighted that the provision was found in compliance with the Constitution solely due to the absence of a clear definition of circumstances in which it is possible for the prosecutor to make use of the possibility of restricting the right to defence that consists in controlling the suspect's correspondence with his/her defence counsel. The said provision requires an intervention from the legislator that would consist in adding condition that imposes a limit on the prosecutor to exercise the above right, guaranteed, in principle, by the challenged provision.

The constitutionality of the provision regulating the way the arresting authority exercises the right to attend the interview between the arrested and his/her defence counsel was the subject of the Defender's petition, submitted to the Constitutional Tribunal. The Tribunal granted the petition of the Defender, and ruled that the challenged provision was incompatible with the constitutional right to defence in view of the principle of exclusivity of the statutory regulation of the rights and obligations of citizens, because it did not indicate the premise whose existence entitles the arresting authority to be present during the interview of the detained with a lawyer. The Tribunal found that the right to obtain legal advice by the detainee in a way which does not make the detainee uneasy at the preliminary stage of criminal proceedings was essential to ensure an effective opportunity to defend himself/herself at a later stage. In the said verdict, the Tribunal shared the Defender's charges that the regulation contained in the provision in question constituted an inadequate restriction of the right to defence.

C. Cost of proceedings

The Defender submitted a request to the Constitutional Tribunal to declare the provision of the Code of Penal Procedure, in the wording stipulated by the Act of



20 January 2011, amending the Act Code of Penal Procedure, to the extent in which it does not provide the grounds for appealing against a judgment on the cost of the proceedings, adjudged for the first time by the court of appeal, to be non-compliant with the constitutional principle of two-instance proceedings in conjunction with the right to a fair and open trial, and with the principle of equality before the law. In the justification of her request, the Defender emphasized that if the court of appeal is the first to rule on the costs of penal proceedings, an appeal to the court of second instance should be possible against the relevant judgment, in accordance with the constitutional rules invoked in the request. The case is pending before the Constitutional Tribunal.

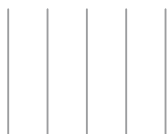
D. Excessive length of proceedings

The Defender continued the activities related to excessive length of proceedings, caused by waiting for expert opinions. In her petition to the Minister of Justice, she pointed out that, despite earlier assurances, the problem remains unsolved (the Act on court appointed experts, the draft of which was prepared at the Ministry of Justice, has not been passed yet). In reply, the Defender was informed about administrative measures aimed at reducing the time of waiting for expert opinions. The Defender was also informed that the work was underway in the Ministry of Justice on a draft Act on court appointed experts, aimed i.a. at reducing the time of waiting for expert opinions.

E. Right to a fair trial

The Defender constantly monitors the issue of pursuing recourse claims by State Treasury, on the grounds of legal provision of the Code of Penal Procedure, from persons whose unlawful actions resulted in the payment of compensation by the State Treasury. The Defender asked the Minister of Justice to analyse the need for amending the said provision, with a view to further specify its regulations in order to facilitate the pursuing of claims by State Treasury. The issue is monitored by the Defender.

The issue of participation of representatives of social organisations in penal proceedings was the subject of the Defender's petition to the Minister of Justice. The Defender is of the opinion that there is a contradiction between two provisions of the Code of Penal Procedure concerning the participation of representatives of social organisations in penal proceedings. According to one of the contradictory provisions, the participation of representatives of social organisations in court proceedings is allowed on the grounds of "protection of public interest or a vital individual interest". The literary wording of the second provision imposes an obligation on the court to de-





termine whether the participation of representative of social organisation is allowed, taking into account a completely different criterion, i.e. the “interests of justice”. The above proves that the criteria of allowing for participation of representatives of social organisations in penal proceedings are unclear. The modification of the provision stipulating that “the court shall admit a representative of a social organisation if such participation is in the interests of justice” into “the court shall admit a representative of a social organisation, if such participation is not contrary to the interests of justice” would eliminate the internal contradiction of the provisions, and define clear grounds for allowing the participation of representatives of social organisations in penal proceedings. Due to the fact that the provision in its current wording has been in force for many years and its appropriate understanding is well-established, the Minister did not agree that there was a need for amendment.

In her petition to the Minister of Justice, the Defender addressed the issue of access to files of penal proceedings for a parent who has not been admitted to act as a party in the case, based on a provision of the Code of Penal Procedure stipulating the rules of access of the parties and other persons to files of penal proceedings. The applications received by the Defender have revealed the practice of prosecutor’s offices and courts which refuse access to files to parents who are not admitted to the proceedings as a party. The Defender is of the opinion that a parent, who was not admitted to participate in the proceedings as a statutory representative of the injured minor, does not cease to be the “statutory representative” as defined in the Family and Guardianship Code. Moreover, as the statutory representative of the minor, the parent should have a guaranteed right of access to the files of penal proceeding in which the injured party is a minor under his/her parental authority. Exercising the rights of a minor as an injured party in penal proceedings is a different issue than the access of parent to files of penal proceedings in which the injured party is a minor under his/her parental authority. The Minister did not agree with the Defender, stating that a parent can obtain information about the course of proceedings under general rules – upon consent of the president of the court or the prosecutor.

F. Proceedings in case of penalty notices

The Defender continued her activities aimed at extending the possibility of revoking a valid penalty notice. Above all, the Defender argued that there was a need to extend possible grounds for revoking a legal penalty notice, referred to in the Petty Offences Procedure Code, and to introduce a possibility to reopen the proceedings related to penalty notice, if the penalty for a petty offence was imposed by court decision, issued pursuant to a provision eliminated from the legal system by a judgment of the Constitutional Tribunal. In reply to yet another petition, the Minister of Justice informed that the prepared draft amendment includes inter alia the proposal of the



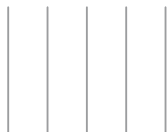
Defender to extend the scope of control of the court, exercised pursuant to the said provision. However, the draft does not provide for a possibility of reopening the proceedings concerning penalty notice.

G. Personal freedom

The Defender received reports about persons held in penitentiary establishments, despite the fact that their pre-trial detention had been revoked by the court. Persons who were not sentenced for imprisonment with a final court judgment can be detained in a penitentiary establishment only based on a court decision, imposing or extending their pre-trial detention. In the said cases, such decisions were not in place and, therefore, detention of those persons in the pre-trial detention centre after the court has issued a decision revoking this preventive measure must be considered a violation of their constitutional right to freedom. In her petition to the Minister of Justice, the Defender asked for urgent action to eliminate irregularities related to delays in releasing the persons, whose pre-trial detention was revoked by the court, from penitentiary establishments. In reply, the Minister informed that efforts were being undertaken to select appropriate technical and organisational solutions enabling immediate and safe transfer of documents constituting the basis for releasing the inmates. This relevant ordinance reflects the suggestions of the Defender, introducing a solution aimed at preventing delays in releasing persons, whose pre-trial detention was revoked by the court, from penitentiary establishments.

During their visits to 11 large prisons and pre-trial detention centres, the employees of the Office of the Defender verified whether the use of coercive measures against inmates by the Prison Service officers was justified. The findings were alarming and revealed frequent cases of unlawful actions by Prison Service officers, that can be characterised as degrading or cruel treatment and, in extreme cases, as torture. Such cases prove that the supervision exercised by the management of Prison Service is insufficient. The Defender petitioned the Minister of Justice to restore the guarantees of the lawful use of coercive measures by Prison Service officers. In reply, the Minister stated that provisions regulating the use of coercive measures would be amended and stipulated in legal regulations with a status of an act. The Minister also informed that he had forwarded the comments of the Defender to the Director-General of the Prison Service, and had ordered detailed examination of all issues indicated as irregularities in the petition. The Minister also ordered more intensive and extensive controls by the management to verify whether coercive measures were used appropriately.

Examining the applications for cassation of court decisions on transfer of suspects under the European arrest warrant (EAW), the Defender encountered the problem of examining the evidence constituting the grounds for arrest and issuance of EAW by a Polish court ruling on the surrender of a wanted person who is a Polish citizen





to the judicial authorities of the country where the warrant was issued. The Defender called for introducing a regulation in the Code of Penal Procedure which imposes an obligation on the court executing the EAW to examine the evidence concerning the acts with which the suspect is charged, and which are to serve as the grounds for transferring of a Polish citizen. Another problem is the application of the provision of the Code of Penal Procedure stipulating that a wanted person with respect to whom a final decision on surrender was issued shall be transferred to a competent court authority of the country where the relevant European arrest warrant was issued, at the latest within 10 days from the day of the decision becoming final. The provision raises doubts with regard to the protection of rights of person transferred to the country where the EAW was issued. The said provision makes it almost impossible to lodge and examine cassation of the final court decision to transfer the wanted person. The cassation may provide grounds for obligatory refusal of transfer, but the wanted person may already be in another country. Therefore, it seems justified to halt the transfer of a wanted person until the cassation is examined. The Defender asked the Minister of Justice to present a position on this issue. In reply, the Minister stated that there were no grounds for introducing to Polish penal proceedings the amendments indicated in the Defender's petition.

The Defender also proposed to participate in the proceedings before the Constitutional Tribunal concerning a constitutional complaint relating to pre-trial detention for the period exceeding 2 years after revocation of the first verdict of first instance court, pursuant to the provision of the Code of Penal Procedure stipulating that if there is a need to apply pre-trial detention after the first verdict of the first instance court, each extension of the detention shall not last over 6 months. The Defender argued that the provision, to the extent it allows for pre-trial detention for the period exceeding 2 years after revocation of the verdict of first instance court, without specifying the grounds justifying such extension or the upper limit of pre-trial detention, is contrary to the constitutional right to personal freedom, in view of the principle of legal protection of freedom and the democratic rule of law. The Constitutional Tribunal ruled that the challenged provision, to the extent in which it does not specify the ground for extending pre-trial detention after the first verdict is given by first instance court, is contrary to the constitutional right to personal freedom, in view of the principle of legal protection of freedom, and is in breach of the ban on torture and cruel, inhuman and degrading treatment and punishment in view of to the principle of humane treatment.

The complaints examined by the Defender revealed a problem of constitutionality of provisions regulating strip search and search of vehicles by public officers, not defined by the term "strip search". Based on statutory provisions, it is not possible to determine the list of actions performed by the officers during strip search. In the opinion of the Defender, the issue of strip searches, which is closely linked to personal inviolability and freedom, should be regulated in an act. The provisions of the Acts on the

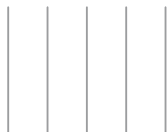


Police, on the Border Guard, on the Internal Security Agency, on the Anti-Corruption Bureau, on the Government Protection Bureau, and on gmina guards are not compliant with the constitutional right to personal inviolability and freedom, in view of the principle of legal protection of freedoms because that they do not determine the limits, method and procedure of entering the area of personal inviolability and freedom by public authorities. The provisions grant the officers the right to search luggage or loads on the means of transport. Whereas the legislator generally defined cases when the search of a vehicle is allowed, the constitutional obligation of defining the method of such search in the act was completely ignored. Therefore, the statutory provisions in this scope are also contrary to the constitutional principle of inviolability of home, premises and vehicle, since they do not specify the method of searching the vehicles. The legislator did not provide for a possibility to appeal to court in cases concerning strip search and vehicle search. Therefore, in the discussed scope, the provisions of the Acts are non-compliant with the constitutional principle of a fair and public trial, without undue delay, before a competent, impartial and independent court, as well as with the "access to the court" principle. The Defender requested the Minister of the Interior to take up actions to adjust the existing legal situation to constitutional standards. The Minister has not responded yet.

H. Citizens' safety

The analysis of submitted complaints revealed a problem of constitutionality of the provisions regulating the operations of the National Police Information System. The Commissioner submitted a request to the Constitutional Tribunal to declare the said provisions unconstitutional. According to the Defender, the provisions are imprecise and unclear. Regulations do not exist on the procedures of deleting data from Police registers which would give the individuals, whose data are stored and processed by the Police, the right to demand correction and deletion of information that is untrue, incomplete or acquired by means contrary to the act. The fact that an individual does not have the right to request the above gives the Police authorities a privileged position in the proceedings on deletion of data from registers, since they can decide about the deletion at their discretion. This is all the more dangerous for the rights of individuals, since the Police can obtain, collect, verify, process and use information containing data on citizens without any external control, such as of the court. The case is pending before the Constitutional Tribunal.

The Defender addressed a request to the Constitutional Tribunal to declare the provision of the Act on Customs Service, regulating the right of access to telecommunications data and their processing by the Customs Service, to be non-compliant with the constitutional right to freedom and privacy of communication in view of the principle of exclusivity of the statutory regulation of the limits on exercising consti-





tutional rights and freedoms; and to declare the provision of the said Act, regulating the rules of deleting the obtained telecommunications data, non-compliant with the constitutional right to demand the correction or deletion of untrue or incomplete information. Pursuant to the first of the discussed provisions of the Act on Customs Service, telecommunications data can be made available to the Customs Service in order to prevent or detect tax offences against organisation of games of chance. In the said case, observance of the principle of proportionality was not ensured. The Customs Service can covertly interfere with the constitutionally protected right to freedom and privacy of communication at any moment, not only when it is necessary in the democratic rule of law. The legislator also failed to ensure external control over the Customs Service in exercising this right. The storage of data other than those obtained for the above purpose is non-compliant with the constitutional right to demand correction and deletion of information that is untrue, incomplete or acquired by means contrary to an act. The case is pending before the Constitutional Tribunal.

The Defender addressed the Minister of Justice on the issue of state compensation to victims of crimes. According to the Defender, the analysis of the Act on state compensation to victims of certain crimes, as well as the judgments of courts in this scope, leads to the conclusion that the Act, contrary to its *ratione legis*, not only fails to ensure efficient help to victims of crimes, but often results in their secondary victimisation. It was assumed that 12 800 people a year would apply for compensation, whereas between 2005 and 2009 the amount of granted compensations was only 0.2% of the assumed amount. The Defender is of the opinion that the significance of charges requires a new Act to regulate the institution. In reply to the Defender's petition, the Minister stated that appropriate legislative and information measures would be undertaken.

Prompted by the cases of drastic treatment of tenants by owners of buildings in order to force the former to abandon their apartments, the Defender petitioned the Minister of Justice to amend the provision of the Penal Code of 1997, which sanctions the violence against a person as well as unlawful threats used to compel a person to act in a specified way, to refrain from or to submit to certain conduct, and to give it wording analogous to the provision of the Penal Code of 1969, which penalises violence used not only against persons but also against property in order to compel a person to a certain conduct (to refrain from certain conduct). The Minister did not agree with the Defender, pointing to the intention of the legislator to exclude the use of penal provisions in civil law cases.

The Defender lodged a request to the Supreme Court for a resolution clarifying whether the crime consisting in the abuse of power, as specified in the Penal Code, is formal or material in nature, i.e. whether the assignment of liability for a crime requires the finding of its effect in the form of direct threat of damage to individualised and specified public or private interest in given factual circumstances as a result of abuse of power or non-performance of obligations by a public officer. The prevailing

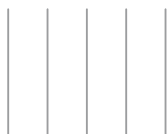


interpretation in case law is that the abuse of power is both of material (as in the above enquiry) and of formal nature. Consequently, damage to both public and private interest is not a characteristic of the effect but rather of behaviour of the perpetrator, and the direct threat of damage alone is not a feature of this type of prohibited act. The Defender is of the opinion that the crime specified in the said provision is of material nature. The Supreme Court ruled as follows: “The crime consisting in abuse of power belongs to crimes involving specific exposure to danger, and thus material crimes, whose distinguishing effect is the threat of damage to public or private interests.”

I. Road traffic

The Defender filed a petition to the Minister of Transport, Construction and Maritime Economy addressing the fact of failure to exercise statutory authority stipulated in a provision of the Road Traffic Law to specify, by ordinance, the method, procedure and technical conditions for collection, processing, accessing and deletion of recorded images and data by the General Inspector of Road Transport (...) in cases of petty offences, and to protect the registered data against unauthorised interference and disclosure. The Defender pointed to the need to regulate the above issue by way of an act, accounting for the wording of the constitutional provision on the statutory exclusivity of rules and procedures for collection and disclosure of information. In reply, the Minister informed the Defender that work has been ongoing on the draft Ordinance since 2011; the Minister did not agree with the Defender’s opinion that the said regulation of the Road Traffic Law, questioned by the Defender, was unconstitutional.

In her petitions to the Minister of Justice and to the Minister of Transport, Construction and Maritime Economy, the Defender addressed the problem concerning the provision of the Code of Petty Offences stipulating that whoever, despite an obligation to do so, does not identify, upon request of authorised authority, the person to whom he entrusted the vehicle for driving or use in a specified time, shall be subject to penalty. In their summons, the authorities inform that failure to identify the driver who committed a speeding offence, recorded by a speed camera, will result in liability under the provision of Road Traffic Law stipulating that a vehicle owner or holder is under obligation to identify, upon request of authorised authority, the person to whom he entrusted the vehicle for driving or use in a specified time – in line with the challenged provision of the Code of Petty Offences. At the same time, the authorities do not disclose the photographs from speed cameras to vehicle owners or holders. The Defender emphasized that the disputed provision creates a legal situation where the vehicle owner or holder is under legal obligation to incriminate a closest person with his testimony in explanatory proceedings, and the failure to comply results in the owner’s or holder’s liability for the offence. According to the Defender, such legal situation cannot be reconciled with the principle of citizens’ confidence in the state





and the law. Furthermore, the provision of the Road Traffic Law listing the activities performed by the Road Transport Inspection when identifying violations of road traffic regulations, as recorded by recording devices, does not give the Road Transport Inspection procedural rights to initiate court proceedings prosecute and punish the offence specified in the said provision of the Code of Petty Offences. Both Ministers stated that if the provision of the Code of Penal Procedure allowing a witness to decline to answer a question, if such an answer might expose the witness himself or his next of kin to a liability for an offence or a fiscal offence, would give grounds for refusal to identify the closest person to whom the vehicle was entrusted, such persons would remain unpunished. The Minister of Transport agreed with the argument on the necessary amendment to the provision of the Road Traffic Law which could, e.g., read as follows: “The owner or holder of the vehicle shall, upon request of authorised authority, identify the person to whom he entrusted the vehicle for driving or use in a specified time.” The Minister of Justice agreed that the right of the Road Traffic Inspection to perform investigating activities, bring action to court, and prosecute in court cannot be extended to include offences consisting in speeding and ignoring traffic lights. The Minister of Transport disagreed, presenting extensive justification of the argument that the General Inspector of Road Transport has a status of public prosecutor in cases involving the offence specified in the said provision of the Code of Petty Offences.

J. Protection of the rights of persons deprived of liberty

The Defender pointed, *i.a.*, to the problem of executing penalties with regard to thousands of persons who, for various reasons, do not serve their valid custodial sentences. This calls for appropriate actions aimed at enforcing more efficiently judgments that impose immediate custodial sentences. The Minister informed that the execution of sentences in penal cases is monitored on an ongoing basis by presidents of courts of general jurisdiction. The Ministry, in order to streamline the operations of courts in execution of judgments, undertaken actions that resulted in a rule that judgments issued in enforcement proceedings are enforceable upon their issuing. Courts were also granted the possibility to issue an order to bring a convict to pre-trial detention centres without prior summons.

Issues raised by the Defender in general petitions aimed at protecting the rights of persons deprived of liberty include: improvement of social and living conditions of detainees/inmates; removal of CCTV cameras from rooms intended for strip searches and from rooms for unsupervised visits; elimination of irregularities regarding convoys; appropriate performance of the obligation to supervise telephone conversations by the Prison Service; meals for Poles deported to Poland to serve a custodial sentence; appropriate execution of the inmates’ right to telephone contact with their



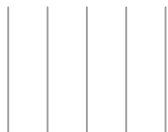
defence counsel and attorney, and granting such right to persons held in temporary detention; ensuring that the funds transferred to an inmate upon his/her release are used as intended; legislative initiative to regulate the access of inmates of penitentiary establishments to public information; ensuring that the inmates transferred to another penitentiary unit receive meals compliant with doctor's recommendations.

Issues raised by employees of the National Preventive Mechanism in general petitions concerning the protection of rights of persons deprived of liberty include: overcrowding in penitentiary establishments; need to establish an obstetrics and gynaecology ward in one of penitentiary establishments in southern Poland; medical services in rooms for detained persons or persons brought to sober up in Police organisational units and in Police emergency centres for children; installation of CCTV cameras in sobering-up stations.

K. Protection of the rights of juveniles

The Defender pointed out that a legislative initiative was needed to amend the Act on juvenile delinquency proceedings in order to ensure that a family court can extend the period of stay in a care centre until the end of the school year only with consent of person who turned 18 before the end of the school year. A provision of the Act on juvenile delinquency proceedings stipulates that if a juvenile becomes 18 before the end of the school year, a family court can extend the stay of that person in the care centre until the end of the school year, without consent of such person. This solution was introduced to ensure that a person placed in the juvenile care centre completes a given stage of education even after he/she becomes 18 years old. Frequently, however, decisions are issued on extending the stay of juveniles who become 18 at the care centres to ensure that they continue their education, although they do not want to stay at the centre anymore. According to the Defender, this solution breaches the provision of the Constitution, stipulating that education is compulsory until 18 years of age. The Minister of Justice informed that the proposed amendment of the said provision, introducing the requirement to obtain consent of the person concerned for extending his/her stay at the care centre until the end of the school year would be taken into account during legislative work on assumptions for the draft Act amending the Act on juvenile delinquency proceedings and the Act – Law on Common Courts Organisation.

The Defender lodged a petition to the Minister of National Education to take actions ensuring effective execution of court decisions on placing juveniles in youth care centres. If the court decides on placing a juvenile in a youth care centre, the immediate execution of such decision should be a priority. If at a given time it is impossible to find a place for a juvenile which would meet all the selection criteria, including educational criteria, then a possibility should exist to place such juvenile in any cen-

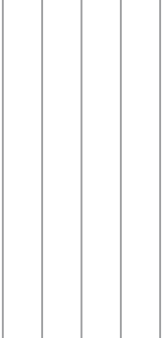




tre, covering him/her at the same time with individual education plan until the place in the appropriate class is available. Such a solution would protect the juvenile against further moral corruption, at the same time allowing the juvenile to fulfil schooling obligation. The Minister believes that the flexibility of care centres is the reason for problems with referring juveniles to appropriate centres. Each case is examined individually; therefore, the profile of each centre must be adjusted to individual needs of the juvenile. Not every centre is able to satisfy those needs. For the same reason, the Minister challenged the proposal of the Defender to temporarily place the juveniles awaiting referral in the nearest centre to ensure continuity of their education. The Minister listed a number of activities undertaken by the Ministry to streamline the organisation and operation of youth care centres.

While performing the function of the National Preventive Mechanism, the Defender turned her attention to the problem of using the penalty and reward system in juvenile detention centres and juvenile shelters. The analysis of regulations in place reveals that the system was created by an ordinance, issued without a clear statutory authorisation. The provisions of the Ordinance of the Minister of Justice on juvenile detention centres and juvenile shelters specify the actions for which the juveniles may be rewarded and punished. The Ordinance also lays down the lists of rewards and disciplinary measures, and introduces the rules governing the rewarding or punishing of juveniles. The Defender claims that the challenged provisions of the Ordinance were issued in breach of statutory authorisation provided for by the Act on juvenile delinquency proceedings. Therefore, the Defender requested the Constitutional Tribunal to declare that these provisions are contrary to the constitutional principle saying that ordinances shall be issued by the authorities indicated in the Constitution, pursuant to a specific authorisation stipulated in an act, and for the purpose of implementing the act.

The Constitutional Tribunal ruled that the provisions were non-compliant with the Constitution.



3. The most important issues concerning labour law, social security, and uniformed services



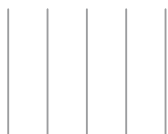


A. Issues regarding labour law

The Defender requested the Supreme Court to pass a resolution clarifying whether the dismissed member of the board of a company, employed at the post based on an employment contract, which was terminated in breach of the law, is entitled to claim reinstatement. According to the Defender, the provisions of the Code of Commercial Companies refer only to the organisational relationship. Therefore, the expiration of this relationship, as demonstrated by the dismissal from the position of a member of the board, does not automatically entail the termination of employment relationship. Termination of employment requires additional action. The Supreme Court passed a resolution stating that if an employment contract with a member of the board of a company dismissed pursuant to the Code of Commercial Companies is terminated in breach of the law, then the reinstatement claim is possible.

Due to inconsistencies in the judgments of the Supreme Court with respect to legal effects of the delay in providing the employer with information about the total number of trade union members, the Defender filed a request to the Supreme Court to rule on the matter. The binding principle is that the rights of a company trade union organisation are vested only in an organisation associating at least 10 members with a status of an employee, contractor or officer. Therefore, the company trade union organisation has an obligation to present the employer or the unit commander with information about the total number of its members, including the number of employees, contractors and officers, each quarter, as of the last day of the quarter, by the 10th day of the month following the said quarter. The information does not have to be in the form of a list with names; it has to present specific numbers only. The Defender concurs with the opinion that the delay by a trade union organisation, resulting in breaching the Act on trade unions, cannot have negative consequences for the employer, in the form of transferring upon the employer the risk, not foreseen by the law, that the trade union organisation acts contrary to the Act. The Supreme Court adopted a resolution stating that the effect of failure of a company trade union organisation to present information about the total number of its members is that the actions taken by the employer without the required cooperation with the organisation are not faulty until the said information is presented.

In her petition to the Minister of Labour and Social Policy, the Defender pointed out that imprecise regulations of the Act on additional annual remuneration for employees of the public sector raise considerable doubts, reported by both the employees and the employers representing units of the public finance sector. The Act does not define the term “period for which one worked”, and thus is unclear whether it refers to the duration of employment relationship or to the actual period for which one worked. The Ministry of Labour and Social Policy argues that the right to annual remuneration is determined based on period for which one worked, understood as the duration of employment by a given employer in a calendar year for which the remuneration is determined.





neration is due. The Supreme Court presented a different opinion in its resolutions. The Defender believes that an initiative is necessary to amend the Act on additional annual remuneration so as to eliminate doubts regarding the grounds authorising an employee to receive the annual bonus. The Minister agreed that the Act should be amended, and declared that appropriate actions would be undertaken.

B. Right to social security

The change in the rules of pension indexation introduced in 2012, which consisted in replacing percentage indexation with indexation by a specific amount, triggered a considerable number of complaints filed to the Defender. The analysis of charges raised in the complaints revealed significant constitutional doubts related to an infringement of the essence of the right to indexation, as the indexation formula adopted resulted in reducing the actual value of pensions that exceeded a specific amount. Considering the above, the Defender filed a petition to the Constitutional Tribunal which, in the course of proceedings, was also supplemented with a petition to the President of the Republic of Poland. In the opinion of the Defender, the provisions challenged in the petition show not only the violation of the essence of the constitutional right to social security as well as of the constitutional principles of equality and social justice as regards pensions paid from the general social security system, prescribed by the provisions of the Act on pensions, but also to pensions paid from the social insurance of farmers, and the pension system for professional soldiers and officers of the uniformed services. Also, the use of the amount-based method of indexation of pensions of war-disabled persons, which in principle leads to reducing the actual amounts of such pensions, is contrary to the duty of special care which, according to the Constitution, the State should provide to the veterans of the struggle for independence. The Constitutional Tribunal *en banc* examined the combined applications of the President of the Republic of Poland and of the Defender, and ruled that the 2102 replacement of the percentage indexation of pensions with indexation by a specific amount was compliant with the Constitution. Five judges expressed dissenting opinions.

The Constitutional Tribunal examined the Defender's request for declaring a provision of the Act on pensions from the Social Insurance Fund on re-establishing the right to a pension or their amount as counteracting the constitutional principle of citizens' confidence in the state, and ruled that the unlimited power of the pension body to initiate proceedings *ex officio* to verify the established right to a pension or the amount thereof was unconstitutional. In her letter to the Minister of Labour and Social Policy, the Defender requested the Minister to express his position on initiating a legislative initiative related to the implementation of the above ruling of the Constitutional Tribunal. The Ministry replied that an analysis of the Constitutional



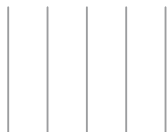
Tribunal's judgment prepared by the Government Legislation Centre found that there was no need to start legislative work aimed at implementing the ruling because the provision that allowed the verification of pensions, based on a different assessment of the evidence, had been eliminated from the legal system.

In connection with the request, submitted by the President of the Supreme Administrative Court, to adopt a resolution aimed at clarifying whether the employees who perform work of a special character within the meaning of the Act on bridge pensions are only the employees performing this type of work on a full-time basis, or also persons who are employed at an establishment on a full-time basis and perform work of a special character regardless of its duration, while performing other additional activities identified by the employer in carrying out the work, the Defender joined the proceedings and presented her position that the employees performing work of a special character covered by the records referred to in the Act on bridge pensions are the employees who are employed on a full-time basis, and perform the types of work included in the list of works of a special character that constitutes the annex to the Act on bridge pensions. The Supreme Administrative Court, passed a resolution of seven judges in the light of which in the proceedings to enter an employee on the list of employees performing work under specific conditions or of a specific character, referred to in the Act on bridge pensions, the employees performing work of a special character within the meaning of the Act are the employees who perform work of a special character and also perform any additional activities, as requested by the employer in carrying out the work.

C. Family rights protection

The Constitutional Tribunal examined the Defender's application for considering some provisions of the Act on family benefits incompliant with the Constitution. The challenged provisions were said to deprive people of the right to an allowance for being a single parent of a third child and the subsequent children. The provisions of the Act set the maximum amount of allowance for single parents at PLN 340.00 per month, which means that with the amount of allowance of PLN 170.00 per child, the allowance may be granted only for two children of a single parent. A similar conclusion can be drawn for a single parent of a disabled child. In the Defender's opinion, since the regulator recognized the need to provide public support to single parents, there are no rational grounds to justify eliminating the possibility of obtaining the right to an allowance for single parents for the third child and subsequent children. The Constitutional Tribunal ruled that the challenged provisions complied with the Constitution, and did not share the Defender's arguments on the matter.

The Defender petitioned the Minister of Labour and Social Policy to change the system of organisation as well as the rules of functioning of adoption and care centres. The Defender expressed doubts as to amendments to the statutory regulation





by which, as of 1 January 2012, public adoption and care centres were liquidated. In addition, the Defender voiced concerns about legal solutions regarding the transfer of adoption and care centres from poviats to the level of the voivodeship, as well as about the different treatment of adoption and care centres in granting authorization to run centres after 1 January 2012 – because of their status (public and non-public) and due to the number of adoption procedures. Liquidation of some centres may limit access thereto and, consequently, make the adoption procedure considerably longer. The Minister did not share the doubts expressed in the Defender's petition. He explained that the purpose of changing the organisation of adoption proceedings was to improve the quality of services, which should be reflected by a shorter time of children waiting for adoption. The provisions of the Act on supporting families and the foster care system that concern the liquidation of adoption and care centres, as well as the criteria for establishing such centres, will be examined by the Constitutional Tribunal, based on an application filed by a group of Sejm Deputies.

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

During the visit of Defender's representatives to military units, the commanders highlighted the problem of under-manning of units that may hinder proper implementation of current tasks, as well as the excessively long procedure of cases handled by the newly created Military Economic Agencies, which hinders the proper functioning of units. Another problem was the weakening effect of the system motivating to take up and continue military service, in particular the decreasing effect of the seniority bonus. The number of families, in particular the families of non-commissioned officers with many children, requiring social support from military units is increasing.

The complaints of non-commissioned officers concerned particularly the too small differences between the salaries of privates and non-commissioned officers, with much more responsibility on the part of the latter. It was pointed out that soldiers lacked a sense of stability in service due to frequent, usually unfavourable amendments to the Act on military service.

There were many reservations about the military health care system which, in the opinion of soldiers, was a serious impediment to service.

Professional privates pointed out the difficulties of and restrictions on shifting to become non-commissioned officers. Housing was perceived as a serious problem by soldiers from many garrisons. The planned housing investments are delayed of many years. For that reason, among others, an increasingly large group of professional privates decide to live within their military unit. The Minister of National Defence, whom the Defender asked for explanations, did not share the reservations, and does not plan to amend the Act on military service.

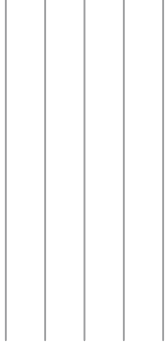


The Defender filed an application to the Constitutional Tribunal that concerned the absence of the possibility to take care of a child up to 14 by a male police officer in a situation where he takes care of a child together with a woman who is not a Police officer. According to the relevant ordinance, the condition for excusing a male Police officer from duty is having a child with a woman who is also a Police officer, or the male officer must be the sole caregiver of a child aged up to 14. Yet, if the mother is not a Police officer, the male officer is not eligible to be excused from duty. In the Defender's opinion, the challenged provisions of the said ordinance have been issued, although the regulator transgressed the statutory authorisation. The case is pending before the Constitutional Tribunal.

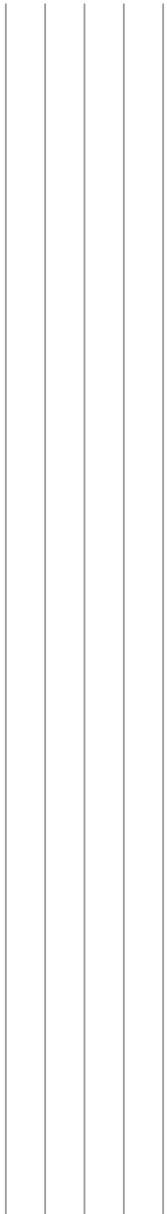
In view of the numerous complaints of Police officers, the Defender petitioned the Ministry of the Interior on the poor conditions of service (often threatening to life and health), lack of specialized equipment necessary to conduct special operations in hazardous conditions, lack of funds for training, and lack of legal regulations on protection of safety and health in Police service. Aware that the issue has been neglected for many years, the Ministry plans to modernise all Police stations and headquarters within 3 to 5 years. The Minister also declared he was doing his best to respond to the postulates of the officers within the available budget.

The Defender received complaints from customs officers that concerned the social benefit in the form of one travel at the expense of the Customs Service a year. The complainants had reservations about the fact that the benefit only covered travel by InterREGIO trains. The Defender filed an application to the Constitutional Tribunal on the issue. As the law changed and the challenged provision had been revoked, the Defender withdrew her application, and requested to discontinue the proceedings. The current regulations give rise to no doubts as to their constitutionality. The Constitutional Tribunal discontinued proceedings on the matter.

Prison Service officers claimed there were too few supervisors in the penitentiary wards, and thus it was impossible to have free tests for infectious diseases (hepatitis, HIV), despite the fact that the supervisors come into contact with infected people at work. There were also complains about failure to pay the housing allowances. The Defender petitioned the Director General of Prison Service on the issue. Having analysed the petition, the Director presented a number of projects, aimed at improving the work of Prison Service and protecting the life and health of its officers.



4. Major issues concerning civil law



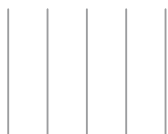


A. Property law protection and real estate management

Continuing the petitions in this area filed in previous years, the Defender took a number of steps aimed at strengthening the rights of the owners with a view to restore the disturbed balance – in the opinion of the Defender – between the need for consolidating the common good and the protection of constitutionally guaranteed rights of individuals. The precedential ruling of the Constitutional Tribunal on the Defender's petition concerning the so-called special road act was of utmost importance in the matter, yet it was unfavourable to owners. The Defender also demanded that facilitations be introduced when buying out the so-called remainders, i.e. properties adjacent to roads that are subject to unfavourable effects of roads. She also addressed the recurring problem of non-payment of compensations for multi-annual 'freezing' of real estate intended for planned public investments that have not been implemented. A considerable number of complaints to the Defender concerned the procedure of determining and paying compensations for real estate intended for public roads in local spatial management plans, inscribed in the Act on real estate management, as it is conducive to gross delays of many years in paying out the compensations. These issues are indirectly related to the problem of inadequate statutory indexation indicators in the case of delays in payments of dues, as provided by the Act on real estate management and by specific acts (all kinds of compensations, fees, including annual fees and betterment levies, surcharges, discounts, compensations, etc.). Unfortunately, almost none of the above petitions brought satisfactory results. On the contrary, these are still the areas where systemic violations of the constitutional rights of citizens, in particular the right to property still prevail.

B. Reprivatisation

The general problem of reprivatisation remains unsolved. Absence of a reprivatisation act that would introduce principles, clear and equal for all, for the return in kind or compensations for property seized at the times of the Polish People's Republic, generates increasing social conflicts and a sense of injustice that emanates from a number of complaints, addressed to the Defender, by former owners and current owners, as well as the inhabitants of the returned tenements. The majority of the above problems was covered by the Defender's general petition to the Prime Minister. The Defender also separately handled the problem of compensations for land in Warsaw which was seized pursuant to the so-called Warsaw decree, especially following the ruling of the Constitutional Tribunal that was favourable to former owners.





C. Right to court in civil proceedings

A separate category covers the actions taken by the Defender in order to consolidate the trial rights of parties to civil proceedings, and thus to exercise fuller the constitutional right to court. First of all, the Defender again addressed the problem of the so-called substituted service, i.e. the fiction of effective delivery of court letters, despite the fact that a letter has not in fact been received by the person concerned, in the context of a need to personally collect the letter for which an advice note has been issued, and the effectiveness of notifying the post office of a change in one's address in order to avoid the consequences of delivery to one's previous address. The Minister of Justice, whom the Defender petitioned on the subject, declared that the possibility of amending the Ordinance on the detailed procedure and manner of serving court letters in civil proceedings will be considered.

The petition also concerned the issue of courts requiring the collection of court letters in person, not by the addressee's household members. The Defender is waiting for the position of the Minister who declared he would forward the issue to the Civil Law Codification Committee.

The Defender also pointed to the need for introducing various types of trial facilitations for the parties to civil proceedings, as rules of such proceedings are often confusing and too restrictive for its participants. The Defender claimed it would be advisable to change the way in which time frames are calculated in civil proceedings and to consider Saturdays as holidays, which would make it easier for the parties to comply with applicable deadlines. The Defender filed a separate petition to facilitate sending letters by participants staying abroad. She also attempted to arrange the matter of the correct procedure in a situation where there are different contradictory decisions on inheritance from the same person. The recurring problem was the lack of justification of decisions dismissing complaints about the activity of a court enforcement officer by the courts that control the course of enforcement proceedings. This time, the issue will be handled by the Constitutional Tribunal. The Defender postulated introducing order to the rules of accessing land and mortgage registers kept in the paper and electronic form, as well as to the rules of obtaining copies and duplicates of documents in the registers. The Defender joined the proceedings initiated by the constitutional complaint which postulated extension of the deadline for re-opening civil proceedings following a ruling of the Constitutional Tribunal on incompliance with the Constitution of the provision on the basis of which the civil court issued its verdict. In the majority of cases, the Defender's arguments were considered valid and true, but the introduction of the postulated amendments to existing regulations requires time, which means that the Defender must keep monitoring the matters.

The Defender petitioned the Minister of Justice on the absence of the possibility to act as representative of a party to court proceedings by twice and thrice removed ascendants related to the party. Analysis of the existing provisions of the civil, judicial

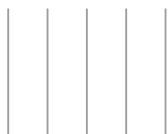


and administrative procedure leads to the conclusion that these people were not included in the list of entities authorized to represent a party as its attorney. Failure to grant the said ascendants the right to represent their relatives in court proceedings is perceived as discrimination on the grounds of age. The Minister of Justice shared the Defender's position and declared he would consider eliminating the problem during the next amendment to the Code of Civil Procedure.

The Defender petitioned the Minister of Health on legal assistance to a mentally ill person being a party to proceedings on compulsory placement in a psychiatric hospital. The current regulation in the Act on the protection of mental health does not guarantee sufficient protection of trial rights of persons with a mental illness who are a party to proceedings on compulsory admission to a psychiatric hospital, which violates their constitutional right to court. In addition, the challenged provision states that only an advocate can act as attorney, which unreasonably excludes the possibility of establishing a legal counsel the attorney of the person against whom proceedings for compulsory admission to a psychiatric hospital are carried out. The Minister of Health granted the postulate of introducing obligatory protection of trial rights of people with mental disorders into the Act on the protection of mental health.

D. Costs of civil and administrative proceedings

Specific problems arise from the regulations relating to the costs of civil proceedings – it is obvious that too restrictive fiscal policy of the state in this area may, in practice, restrict the exercise of the right to court or unduly restrict the property rights of citizens. The Defender intervened, asking for solutions to be introduced that promote mediation, in particular a possibility of exempting the parties from the costs of such proceedings, and having the costs covered by the State Treasury. It was also postulated to reduce the enforcement fees for certain types of enforcement proceedings. Due to the announcement of a comprehensive reform of the Act on court enforcement officers and on debt enforcement, and of the Code of Civil Procedure, the Defender will repeat her petition on this matter as well as on others matters discussed in the previous petitions which, despite the approval of the Defender's postulates by the Ministry of Justice, have not led to introducing relevant amendments to the regulations governing enforcement proceedings. The Defender also pointed out that the method of calculating the costs to be reimbursed to witnesses for their mandatory appearance in court was unfavourable. Unfortunately, the most recent amendment to the Act on court fees in civil cases failed to take the Defender's postulates into account. The Defender also joined two proceedings, initiated by constitutional complaints and aimed at introducing the possibility of the court-appointed defence lawyer to challenge the unpaid costs of legal assistance awarded to him/her from the State Treasury. One of the proceedings ended with deciding that the current regulation was unconstitutional, while the other is pending before the Constitutional Tribunal.





The Defender petitioned the Minister of Finance on determining the amount of the handling fee and the fee for enforcement in enforcement proceedings in administration. The Defender addressed the issue of the costs of debt enforcement under the procedure established by the Act on enforcement proceedings in administration, in particular determining the amount of the handling fee and the fee for enforcement. In the case of percentage-based enforcement fee charged for real estate seizure, the regulator specified the upper limit for such fee, while in other cases, there is no upper limit on the enforcement fee. In the Defender's opinion, the structure of enforcement fees and of the handling fee specified by the regulator in the challenged provisions contradicts the principle of an individual's confidence in the state and in the law proclaimed by the state. The Minister of Finance informed that work was underway on preparing draft assumptions for the draft Act amending the Act on enforcement proceedings in administration that would reform the calculation, amounts, and collection of enforcement fees.

E. Protection of housing rights of citizens

In her petition to the Minister of Transport, Construction and Maritime Economy, the Defender highlighted that the absence of council housing which local authorities [gminas] could provide to the poorest results, in practice, in the increasingly alarming extension of the period of waiting for the execution of valid eviction judgments. In a situation where the law orders to withhold the execution of a judgment until a gmina provides a council flat to the debtor, the insufficient number of council flats results in considerable and unpredictable delays in judgment execution. This, in turn, gives rise to doubts on the part of the Defender whether protection against homelessness interferes excessively with the constitutional right to property – by depriving owners of the right to make free use of their property for an unspecified period that cannot be foreseen. It is also necessary to evaluate the situation from the point of view of the right to court, whose inextricable element is also the right to execute a valid court judgment. The Ministry prepared draft assumptions for the draft Act amending the Act on the protection of the rights of tenants and the housing resource of a gmina, and amending the Civil Code and certain other acts, which provide for, *inter alia*, introducing renting of council flats. The draft was passed on to the standing Committee of the Council of Ministers for consultations. The matter will be monitored by the Defender.

The Defender expressed her doubts as to the regulations adopted as part of the most recent amendment of the Act on financial support for families in acquiring their own apartment and of certain other acts. The Defender raised some doubts about the constitutionality of the age limit introduced by the Act (up to 35 years of age) for the availability of subsidies for housing loans under the “Family in Its Own Home” programme. The restriction does not apply to single parents. In the Defender's view, granting special privileges that are not linked with the material and living situation



to single parents was not justified by the provisions of the Constitution. As the Programme came to an end, the Defender discontinued the issue.

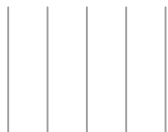
The Defender had doubts about the constitutionality of the introduction, by way of an amendment to the Act on financial support for families in acquiring their own apartment, of additional previously unforeseen grounds that warrant discontinuation of the statutory subsidies to housing loans. The Defender had reservations about the use of new unfavourable regulations also in relation to those who, before the entry into force of the amendment, signed loan agreements under the existing rules. In this case, the state arbitrarily intervened in the content of the agreements that had been concluded earlier by imposing unforeseen and unfavourable provisions on the parties. The case is monitored by the Defender.

The Defender also raised concerns with the practical aspect of the possibility to acquire the ownership of flats built by social housing associations and housing cooperatives with financial support in the framework of government housing assistance programmes, introduced to the Act on certain forms of supporting housing construction. In response to the Defender's petition, the Minister of Transport, Construction and Maritime Economy declared that the parliamentary Infrastructure Committee obliged the Ministry to prepare and submit proposals for legislative changes aimed at improving the functioning of provisions on the separation of ownership of dwellings built by social housing associations and by housing cooperatives using preferential credit. The proposals will take into account the issues highlighted by the Defender.

The Defender addressed a problem that is increasingly frequent in the complaints filed by the citizens, namely the lack of regulations laying down rules for installing CCTV in broadly understood housing resources (cooperative projects, real estate of housing communities, etc.). As in the provisions of general law there are no uniform rules on the installation of CCTV nor on using the recordings, it raises concerns of citizens about potential violations of personal rights and personal data. This problem represents an aspect of the popularisation of CCTV in public spaces (streets, offices, schools, kindergartens) and of the absence of a comprehensive legal regulation in this area. The Defender postulated that, without waiting for the comprehensive regulation, the managers of housing resources, as well as housing cooperatives and communities, should be covered by the obligation to take the decision on installing CCTV by resolution of the competent authority, and should define, in the same manner, the rules of using the data acquired in this way. The case is monitored by the Defender.

F. Rights of members of housing cooperatives

The Defender once again highlighted the problems that result from incoherent regulations of the Act on housing cooperatives. In her petition to the Minister of Transport, Construction and Maritime Economy, she recalled that in the past he





had found justified her remarks on the need to clarify and supplement the provisions establishing the general obligation to dispose of all flats to which the cooperative right expired, by way of a tender for the transfer of separate ownership of premises. This regulation, not taking into account a situation where the sale of ownership of a premises turns out impossible for legal reasons or due to the lack of interested buyers leads to the violation of the rights of both housing cooperatives who bear the financial burden of maintaining such premises, as well as persons entitled to receive a financial equivalent of the expired cooperative right. The Minister declared that the proposals for amending the existing provisions have been accounted for in the draft Act on the activity of housing cooperatives, and expressed his hope that the provisions governing the activities of cooperatives adopted by the Parliament would significantly contribute to improving the performance of housing cooperatives and to meeting the housing needs of their members. The matter will be monitored by the Defender.

The Defender also exchanged letters with the Ministry of Construction on the absence, in the Act on housing cooperatives, of any rules of settlements for the housing contribution after the cooperative tenant's right to premises expires in situations where a claim is made by family members of the former member of a given cooperative for establishing such a right for their benefit. As the government failed to undertake a legislative initiative on the matter, the Defender filed an application to the Constitutional Tribunal. The case is pending.

G. Housing for officers of uniformed services

In 2012, the Defender continued efforts to address various housing problems of officers of uniformed services. Unfortunately, the petition to the Chairman of the parliamentary Administration and Internal Affairs Committee on the need to ensure that persons evicted from the premises at the disposal of Police bodies are provided similar standard of protection to which other tenants are eligible has been left unanswered.. The issue of lack of a statutory regulation on applying the statute of limitations to claims of the Military Housing Agency as regards fees for living in premises on the basis of an administrative decision remains unsolved. It is appalling that the problem which consists in the fact that Government Protection Bureau officers are not paid the monetary equivalent for resigning from a flat has not been handled by the authorities. The right to the equivalent is a statutory right of the officers, but in fact it is not exercised as the equivalents have not been paid out for several years now.



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





A. Right to practice a profession and disciplinary proceedings

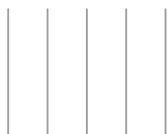
The Defender petitioned the Minister of Labour and Social Policy on the need to introduce uniform rules for practicing the profession of a psychologist. The Defender emphasised that although the Act on the psychologist profession has been in force since 2006, it is not executed in the part concerning the professional self-government. The Minister of Labour and Social Policy declared work was underway in the Ministry aimed at preparing a new regulation on the psychologist profession.

The Defender applied to the Constitutional Tribunal on the restriction of practicing the profession of a medical physicist by the provisions of Ordinance of the Minister of Health of 18 February 2011 on the conditions for the safe use of ionizing radiation for all types of medical exposure. The challenged provisions of the Ordinance have been issued in excess of the statutory authority, as there was no mandate to regulate the issue of qualifications and work experience required of medical physicists conducting tests in the area of control of the physical parameters of radiological equipment or limitations in the practicing of the profession in the underlying act. The case is pending before the Constitutional Tribunal.

The Defender continued activities related to the implementation of the ruling of the Constitutional Tribunal of 18 October 2010 on recognising as unconstitutional several provisions of the Acts on disciplinary proceedings in professional self-governments that provide for lifetime removal from the self-government without the right to apply for re-entry. The ruling concerned professional self-governments of legal advisors, advocates, patent attorneys, nurses, midwives, and veterinarians. Both the Minister of Justice and the Defender agreed on the need to also amend the Act on court enforcement officers and on debt enforcement which contains an analogous provision. The information provided by the Government Legislation Centre shows that the draft Act amending the Act on the bar and certain other acts, which has been developed in order to implement the above ruling, is at the stage of inter-ministerial consultations, and that it covers also the amendments relating to the Act on court enforcement officers and on debt enforcement.

B. Protection of consumer rights

The Defender petitioned the President of the Office of Competition and Consumer Protection (UOKiK) on the practice of offering and concluding life estate agreements and equity release agreements. The Defender expressed her concern about the practices and about content of agreements offered to the elderly for the so-called equity release (including the absence of reliable information, the introduction of clauses that





may be in conflict with the law and with the rules of social coexistence). The Office of Competition and Consumer Protection initiated proceedings on the matter.

The Defender petitioned the President of the Office of Competition and Consumer Protection also on the insurer's refusal to pay benefits from the agreement on additional group insurance against orphaning a child in a situation where the child attends a school abroad. The matter concerned arbitrary exclusion of children attending a school abroad from the group of persons entitled to the benefit. The said exclusion may infringe the group interests of consumers. The Office of Competition and Consumer Protection shared the Defender's doubts and initiated proceedings on the issue.

The Defender received complaints from citizens who raised the problem of failure to disclose to the public the list of companies that used industrial salt in production and processing of food. The complainants argued that failure to publish the list violates their rights guaranteed by the Constitution, in particular the right to health protection, access to information on the activities of public authorities and documents they generate, as well as the obligation to protect consumers against activities threatening their health. The Defender petitioned the Chief Sanitary Inspector and the President of the Office of Competition and Consumer Protection on the matter. In their replies, the petition addressees claimed that the final risk analysis confirmed the conclusions that no threat to health or life of consumers existed. Therefore, they decided not to disclose to the public the list of companies that used industrial salt in production and processing of food.

The Defender petitioned the President of the Office of Competition and Consumer Protection on unfair practices in the telecommunications sector. She indicated that the activity of a provider of telecommunication services allegedly breached the disclosure obligations (not leaving the consumer with a copy of the contract concluded away from company premises, lack of information about the right to withdraw from a contract). The Defender also pointed out that other practices, infringing collective consumer interests, including misleading consumers as to the provider of telecommunication services. In reply, the President of the Office of Competition and Consumer Protection declared that explanatory proceedings were underway to determine whether proceedings on the practices that infringe collective consumer interests should be initiated.

The Defender petitioned the Minister of Justice to evaluate the functioning of consumer bankruptcy regulated by the Act – Bankruptcy and Reorganisation Law. The Defender pointed out the need for an urgent amendment of legislation on consumer bankruptcy because, contrary to the vision of the legislator, consumer bankruptcy in Poland does not fulfil its purpose, which is to relieve the consumer off debt, and the bankruptcy model is too restrictive. For over three years when the Act has been in force, only 36 such bankruptcies have been recorded in Poland. The Minister of Justice shared the view that there was urgent need for changes, and announced the establishment of a Group working on amendment of the Bankruptcy and Reorganisation Law.



The requests and reservations contained in the Defender's petition were submitted to the Group. In December 2012, the Ministry of Economy organised a conference "Towards a new opportunity – presentation of recommendations for changes prepared by the Minister of Justice's Group working on amendment of the Bankruptcy and Reorganisation Law." The recommendations cover, *inter alia*, changes in the area of consumer bankruptcy.

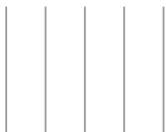
The Defender petitioned the Minister of Finance on shortening the time for which taxpayers who are entrepreneurs must keep cash register receipts. The problem lies in the fact that the period for which it is obligatory to keep cash register receipts is too long (five years), and the receipts become illegible. The Defender requested introducing a two-year period for keeping cash documents. The Minister of Finance did not agree with the Defender's postulates.

In her petition to the Minister of Finance on double sanctions for participation in a gambling game, the Defender referred to the problem of double penalties imposed on citizens, and on accumulation of administrative, penal and fiscal liability for participation in a gambling game, which is contrary to the principle of the rule of law. At present, a citizen may be punished under administrative procedure pursuant to the Act on games of chance, and pay a fine pursuant to the Fiscal Penal Code for one and the same offence. In reply, the Minister of Finance stated that no legislative work was currently underway with a view to amending the regulations in that respect.

C. Public levies

The Defender applied to the Constitutional Tribunal on incompliance with the Constitution of the provisions of the Act – Tax Ordinance that concern the so-called 'silent' tax interpretation. The law defines the deadline for preparing an individual interpretation in writing by a tax authority, but it does not define the deadline for submitting the interpretation to a taxpayer. In effect, the provisions of the Tax Ordinance do not ensure legal security to taxpayers. In the Defender's opinion, the above regulations are contrary to the principle of confidence of citizens in the state and law as they deprive the applicant of full knowledge on the date of entry into force of the 'silent' individual tax interpretation that concerns him/her. The case is pending before the Constitutional Tribunal.

The Defender addressed the Minister of Finance on the issue related to excluding from the rehabilitation relief of the costs incurred for providing care to a disabled person who is residing in a care home. The entitlement to this relief under the provisions of the Act on personal income tax does not apply to expenses related to stay of a disabled person in a care home. In addition, the limit of a disabled person's income that influences his/her eligibility for rehabilitation relief has not been indexed since 2003. The Ministry did not share the Defender's reservations.





The Defender petitioned the Minister of Finance on the amendment of the Act on value added tax that expanded the group of taxpayers without a relevant *vacatio legis*. By the amendment of the Act on value added tax, the regulator expanded the group of taxpayers and gave them three days to adjust to the new legal status. In reply, the Minister of Finance explained that the changes were introduced urgently to counter-act, *inter alia*, tax fraud.

The Defender joined the proceedings on the constitutional complaint concerning some provisions of the Act on excise tax. In the light of provisions of this Act, the seller of fuel oil can be denied the right to exemption from excise duty for oil sold for heating purposes if a buyer provides him with a declaration of the use of oil purchased for this purpose that meets all formal requirements, but contains data inconsistent with reality – even if it is impossible to verify the accuracy of such data. In the opinion of the Defender, by requiring the sellers of heating fuels to collect declarations, and not providing measures to ensure that they can actually control the accuracy of these statements, and imposing tax penalties even in the case of the presentation of forged documents, the legislator violated the principle of proportionality. The case is pending before the Constitutional Tribunal.

Constitutional Tribunal examined the petition lodged by Human Rights Defender on the absence of tax exemption for alimony agreed by way of a court settlement. The Defender requested to declare as non-compliant with the principle of citizens' confidence in the state and in the law proclaimed by the state, as well as with the principle of equality, the provision of the Act on personal income tax, which excludes from exemption the alimony agreed by way of a court settlement of not more than PLN 700 per month that is due to persons other than children, when alimony in this amount for the same group of taxpayers is exempt from tax if awarded by a court judgment. The Tribunal granted the Defender's petition by deciding there were no grounds to differentiate between people who receive alimony depending on whether the alimony had been awarded by a court or agreed in a court settlement.

D. Economic activity

The Defender petitioned the Minister of Transport, Construction and Maritime Economy on the terms of providing occasional transport services. Changes to the terms of providing occasional transport services restricted the freedom of economic activity, and in some cases even made it impossible to continue rendering such services. Not justifying the changes properly, the regulator stipulated that occasional transport would be provided only using vehicles intended for the transport of more than seven persons, including the driver. The Defender's reservations were shared by the Minister, and the regulator introduced relevant changes to the provisions of the Act on road transport.



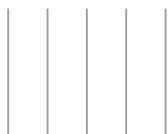
E. Health care system

Petitions of the Defender relating to health care issues concerned primarily incorrect legislation, resulting in an urgent need to amend the Act on medical activity, *inter alia* in the area of conducting medical activity by public benefit organizations (including church entities), and determining the list of entities engaged in medical activities, as well as the amendment of the Act on the reimbursement of medicines, specialised nutrition products and medical products, a.o. by removing some of the restrictions on citizens' access to medicines, and repealing provisions of the Act that imply the need to return to National Health Fund the amounts of undue reimbursement for a prescription issued without duly documented medical reasons, issuing a prescription that is incompatible with the rights of the beneficiary, and issuing a prescription contrary to the guidelines set forth in the notices containing lists of reimbursed drugs, which were criticised by doctors' self-government.

The Defender also pointed out that the list of doctors authorized to issue orders for orthopaedic items and aids, contained in the Ordinance of the Minister of Health on the guaranteed services in the area of supply of medical products that are orthopaedic items and aids, omitted geriatricians. The Minister of Health, whom the Defender petitioned on the subject, shared the Defender's view, and declared work was underway on a draft ordinance that would include geriatricians as doctors authorised to issue orders for the supply of medical products.

In her petition to the Minister of Justice, the Defender pointed to the problem of access to medical records kept by health care units established by the Minister of National Defence and by health care units for persons deprived of their liberty. In the opinion of the Defender, the provisions making access to medical records dependent on the decision of the unit head or of persons authorised by the unit head are in conflict with the Constitution and with the Acts on the rights of patients and on the Ombudsman of Patient Rights, which do not provide for restrictions on patient's right of access to medical records due to the requirement to obtain the consent of the health care unit. The Minister of Justice shared the Defender's concerns, and assured her that the Ministry would take efforts to change the challenged provision so as consent of the head of health care establishment for prisoners is not required when accessing medical records of inmates.

In her petition to the Minister of Health, the Defender pointed out the problem with granting donations by foundations and other charity organizations, which may result in administrative penalties. Under the Act on the reimbursement of medicines, specialised nutrition products and medical products, it was prohibited to use any incentives relating to medicines, specialised nutrition products or medical products subject to reimbursement from public funds. The challenged provision was amended, which is expected to result in eliminating the interpretation doubts, highlighted by the Defender.





The Defender pointed out numerous irregularities and negligence related to the implementation of the National Mental Health Protection Programme, established by Ordinance of the Council of Ministers of 28 December 2010; the irregularities and negligence were detected by the Supreme Audit Office (NIK) during its control of the observance of patient rights in psychiatric hospitals. The Ordinance entered into force on 18 February 2011, i.e. more than two years after the entry into force of the Act under which it has been issued, which indicates that legislative work of the Ministry is not properly organized. The matter is monitored by the Defender.

In regard mental health protection, the Defender also addressed the Minister of Health voicing concerns arising from the regulations on admitting a patient to a mental hospital without his/her consent. The doubts relate to the period that elapses between the admission of a patient without his/her consent to a mental hospital and ruling on the legality of the admission by the court. The legal status raises doubts as to its compatibility with the constitutional standard, which requires that the family or person designated by person deprived of liberty should be promptly notified of the deprivation of liberty. In response, the Minister of Health stated that specifying, in the Act on the protection of mental health, the deadlines for approval for admission of a person with mental disorder to a mental hospital without his/her consent, and for notifying the guardianship court of the fact was intended to ensure that the rights of people with mental disorders were observed, the same being limited by the very fact that they are admitted to the hospital without their consent. The Act stipulates the maximum time frame for the approval and notification, assuming that they should take place as soon as possible.

F. Protection of the rights of patients

In her petition to the Minister of Health, the Defender pointed to the absence of a norm which would require hospitals to provide patients with accommodation and meals in the current provisions of the Act on medical activity. Undoubtedly, this is a legal loophole because only in the case of medical services provided in a hospital the regulator failed to indicate in the relevant substantive provisions of the Act on medical activity the extent of services, and did not explicitly specify the obligation to provide patients with accommodation and food adequate to their health. Yet, it was defined for stationary and all-day medical services other than those provided in a hospital, rendered by a care and curative institution or by a care institution. The Minister of Health declared that the provisions would be changed when work starts on amending the Act on medical activity.

The Defender also addressed the problem of citizens' access to medicines under medicine programmes and in chemotherapy, as well as the availability of cancer medicines to patients. The notice of the Minister of Health with a list of reimbursed medi-



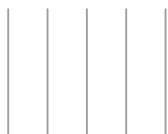
cines used under medicine programmes and in chemotherapy was not adopted in due time, which was a threat to carrying out the necessary procedures for the conclusion of contracts. The Minister of Health informed the Defender of the actions taken by the Ministry to provide patients with guaranteed services in the area of medicines used under medicine programmes and as part of chemotherapy.

The insured were rightly concerned by the extent and terms of access to medical products, resulting from the Ordinance of the Minister of Health on the guaranteed services in the field of supply in medical products that are orthopaedic items and aids, which mostly reproduce the solutions included in other ordinances on this matter adopted in 2004 (including the list of items and aids, and price limits). The Ordinance does not remove the deficiencies highlighted by the Defender (including the discriminatory provisions – i.a. those on providing hearing aids or wheelchairs), and it does not ensure transparency of the access system. The Ordinance does not meet the basic postulates of people with disabilities, particularly those regarding the assortment of reimbursed items and aids, their quality and the frequency of granting them, the price limits (the amount of additional payments by the insured), as well as ensuring their repair and warranty, and simplifying the procurement procedures. To the extent to which they determine the doctors authorised to issue orders for the supply of medical products, the provisions of the Ordinance on the guaranteed services are in conflict with the provisions of the Act of 12 May 2011 on the reimbursement of medicines, specialised nutrition products and medical products. The matter is monitored by the Defender.

G. Protection of rights of foreign nationals

The Defender has monitored the implementation of the so-called abolition act, while at the same time being aware of the problem of unconstitutionality of the delegation that allows Border Guard officers to establish bylaws in deportation centres and in guarded centres for foreigners. Following the visits carried out in October 2012 in three guarded centres for foreigners, an analysis was drafted which covered all applicable laws that govern the rules and conditions of foreigners' stay in detention facilities of this kind. The Defender had particular reservations about the centres' bylaws. The nature of such acts should be merely organisational, but in reality they tend to considerably shape the very essence of the rights and obligations of inmates.

In her petition to the Minister of the Interior, the Defender objected to the detention of juvenile foreigners, and requested a legislative initiative aimed at establishing a complete ban on placing juveniles and their guardians in guarded centres for foreigners. In a separate petition, the Defender referred to the conditions of detaining foreigners. The Defender particularly emphasised the absence of alternatives to detention in the law, such as non-custodial safeguards of the administrative proceedings in





which an alien may be subject to expulsion from Poland. The matter is monitored by the Defender.

Moreover, the Defender drew the attention of the Head of the Office for Foreigners to the problem of delays in the issuance of foreigner's temporary identity certificates (TZTC) to persons who are waiting for their application for the refugee status to be processed. In the opinion of the Head of the Office for Foreigners, the applications are processed within 30 days. The main issue affecting the time taken to process an application for the certificate are additional applications filed by foreigners in parallel with an application for the document. The additional applications concern, *inter alia*, changing personal data, date of birth or citizenship. The certificate is printed only after the *status quo* is established.

H. Protection of the rights of national and ethnic minorities

In her petition to the Minister of National Education, the Defender emphasised the need to disseminate basic information about the Roma minority and to undertake educational measures. According to the Defender, the lack of basic knowledge about the Roma people, their history and cultural identity is one of the reasons behind arising and establishing the negative stereotypes about this minority. The most important among educational measures, in the Defender's opinion, is to complement the school handbooks with basic information on Roma history and culture. The Minister informed the Defender about the actions taken to popularise information about the Roma minority.



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

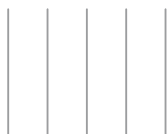




The complaints and requests addressed to the Defender show that the knowledge of human and civil rights protection principles as well as of the case law of the European Court of Human Rights and of the Court of Justice of the EU in relation to the protection of fundamental rights is insufficient among Polish judiciary and Polish society. It is estimated that 95% of all rulings of the Strasbourg Court in cases filed by Polish citizens concern the judiciary. It would be advisable to include more problems related to human rights and the case law of international tribunals, especially in the initial training of future judges and prosecutors. Trainings devoted to specific matters in the area should be organised on an ongoing basis. The Defender petitioned the Minister of Justice on the matter. In addition, in connection with the complaints about both the stereotypical and even disparaging image of women e.g. in advertising, and the image of men as perpetrators of crimes in various social campaigns, and in connection with the Recommendation CM/Rec(2010)7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, the Defender petitioned the Minister of National Education on human rights education.

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

The increasing multiethnicity poses a number of challenges for public institutions. The authorities should create and implement a social policy that would ensure that all the country's inhabitants, regardless of their nationality or ethnic origin, have their human rights protected and are protected against violence. Thus, the situation of national and ethnic minorities requires more attention and calls for actions to educate and overcome the negative stereotypes. Improving the particularly unfavourable situation of the Roma community by eliminating the negative stereotypes requires specific measures. In her petition to the Minister of National Education, the Defender pointed out the need to take measures to disseminate basic information on the Roma minority, and in her petition to the Chairman of the Media Ethics Council she pointed to the problem of some media presenting information on the nationality of perpetrators of criminal offences or of persons suspected of having committed such acts if they were of Roma origin. In reply, the Minister of National Education presented information on a number of measures taken for the benefit of Roma community. In his reply, the Chairman of the Media Ethics Council shared the Defender's concerns and emphasised that the Council had pointed out that such practices breached the principles of ethical journalism, reflected badly on the authors, and undermined the authority of the media. The Defender, in cooperation with the Ministry of Sport and Tourism, organised the "No for racism in sport" promotional campaign. The measures undertaken were intended to prevent the negative phenomena in sport, particularly all forms of discrimination.





In addition, it is necessary to continue regular research that would show the actual extent of racial violence in Poland, and provide guidance for the organization of support and prevention measures. The debate is dominated by anti-immigration rhetoric, frequently based on stereotypes. Complaints filed to the Defender, both by foreigners themselves and in the matters that concern them, mostly pertain to the legalization of stay on the territory of Poland and to acts of violence which they have suffered because of their race, nationality or origin. With this in mind, at the request of the Defender, members of the Expert Committee on Migrants prepared a monograph entitled *Observance of the Rights of Foreigners in Poland*.

In the Defender's opinion, it is also necessary to continue training state service officers, particularly Police officers, in identifying of and responding to racist or xenophobic incidents, and in proper treatment of foreigners. It should be emphasised that the contribution of the guide for Police officers entitled *Anti-discrimination Measures in Units of the Police*, that will be prepared under the auspices of the Defender, will be enormous.

It is still necessary to establish a comprehensive and unified database of crimes committed on grounds of race or nationality based hatred by starting close cooperation in data collection between as many entities as possible, including bodies of public administration involved in this problem area, the judiciary, other public institutions, and NGOs. The Defender petitioned the Commander-in-Chief of the Police, the Minister of Justice and the Attorney General on measures taken to combat crimes motivated by racism, xenophobia and intolerance. The Commander declared that the Police constantly undertakes several measures at central and local levels which are intended to effectively reduce the incidence of racism, xenophobia and intolerance. The Minister of Justice pointed out that counteracting violence motivated by intolerance, xenophobia and racism was the subject of constant interest of the Ministry. The Attorney General declared that the fight against crime on grounds of racism was one of the priorities of the Prosecutor's Office.

Complaints to the Defender also concerned the question of the lack of access of minors residing permanently in Poland on the basis of a settlement permit to sport competitions. In the opinion of the Defender, any person holding a settlement permit has the same rights as Polish citizens, including the right to work, to conduct economic activity, the right to social benefits and to education. Therefore, differences in access to sport competitions based solely on nationality may constitute a violation of the constitutional principle of access to culture. The Defender asked to consider an amendment of the Order of the Minister of Sport and Tourism on the terms of participation in training of youth talented in sports to ensure equal treatment of citizens. The Minister informed that the provisions that allow the participation of juvenile players who hold a permit to settle in Poland in training and in sport competitions would take effect from 1 January 2013.



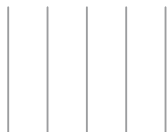
B. Preventing discrimination on grounds of disability

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.

In connection with the ratification of the UN Convention on the Rights of Persons with Disabilities, the Defender initiated a number of measures to fulfil the tasks of an independent body to monitor the implementation of the Convention. A report drafted by members of the Expert Committee on Persons with Disabilities and invited external experts, entitled *Equal Opportunities in Access to Education for Persons with Disabilities*, was published. It contains 15 recommendations that concern, *inter alia*, the implementation and monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities, the promotion of the inclusive system of education of persons with disabilities, and changing the system and its funding, support for teachers, the availability of communications and information systems. Members of the Committee also developed a monograph entitled *The Most Important Challenges Following the Ratification of the UN Convention on the Rights of Persons with Disabilities by Poland*, which is a summary of current activities of public institutions for the protection of the rights of persons with disabilities, and which includes recommendations addressed to the institutions, setting new trends in key areas of social, cultural and public life. The Expert Committee was actively involved in drafting a study entitled *The Polish Road after the Convention*, which describes actions required to be taken by public authorities in connection with the ratification of the UN Convention on the Rights of Persons with Disabilities.

The Defender received a number of disturbing reports indicative of insufficient commitment of public media to improving openness and building a positive image of people with disabilities. One of the negative examples was that the Paralympic Games were not transmitted. The UN Convention on the Rights of Persons with Disabilities stands for a shift from the welfare model to the model of an open society based on the principle of equality and respect for the dignity of every human being. In order to materialise the objective, it is nonetheless necessary to change the manner in which the subject is presented in mass media. The Defender petitioned the President of Telewizja Polska S.A. [Polish Television] on the issue, who declared that as the public broadcaster TVP strived to fulfil its duties towards the society, also by raising awareness of the public on the issues related to persons with disabilities. Yet, for financial reasons, TVP was unable to acquire full television rights to the Paralympic Games.

The Defender also noted the lack of regulations that allow adjusting the form of examinations to become a court-certified translator and examinations to enter and complete the general, barrister's, legal counsel's and notary's training to the needs of persons with disabilities, which should be considered inconsistent with the UN Convention on the Rights of Persons with Disabilities, as well as with the constitutional





principle of equality and freedom to choose and to pursue occupation. The Defender asked the Minister of Justice to consider introducing changes to the legislation in order to adjust the form of the exams to the needs of persons with disabilities. The Defender's postulates were granted in the area of adjusting the examinations to enter and complete legal counsel's and barrister's training in the Ordinance of the Minister of Justice.

The Defender had reservations about the provisions of the Election Code that prevented the disabled from performing functions in local government bodies. The Defender filed application request to the Constitutional Tribunal on the disputed provision of the Election Code, which stipulates that the expiry of the mandate of a *voit* takes place when a decision is issued on his/her incapacity to work or inability to live independently for a period at least until the end of his/her term. According to the Defender, the above regulation is inconsistent with the Constitution, which guarantees that all Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality. The above provision of the Election Code is also incompatible with the Convention on the Rights of Persons with Disabilities, which requires States-Parties to ensure that persons with disabilities have political rights and the opportunity to enjoy them on an equal footing with other citizens, and to ensure that disabled people can participate in public and political life effectively and fully.

The low accessibility of public infrastructure to persons with disabilities also poses a significant problem. The best way to ensure the availability of public space to people with disabilities is the universal design, as highlighted by the Convention on the Rights of Persons with Disabilities. The Convention defines the term as the use of solutions to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design. In her petition to the Minister of Science and Higher Education and to the Head of the Conference of Rectors of Polish Universities of Technology, the Defender pointed out that it was necessary to introduce subjects that present the principles of universal design into the standards of teaching in the fields related to the creation of the developed environment. It also seems appropriate to consider the introduction of changes aimed at explicit inclusion of the principles of universal design to the Building Law. The Minister of Science and Higher Education declared that universities have the opportunity to supplement the curriculum so that each student achieves the expected learning results. Thus, no obstacles exists for education to be enriched by universal design principles that are important from the point of view of all users of the designed objects, including persons with disabilities.

Cases investigated by the Defender revealed also a problem of adapting rail infrastructure to the needs of disabled persons and of persons with reduced mobility. The status quo in this respect is consolidated by the applicable law. Having in mind access to public infrastructure for persons with disabilities, the Defender filed an application to the Constitutional Tribunal for deciding on non-compliance with the Constitution



and with the Convention on the Rights of Persons with Disabilities of the provision of the Act on railway transport in so far as it indefinitely lifts the obligation of railway companies and station managers to ensure the availability of stations, platforms, rolling stock and other facilities for disabled people in the framework of urban, suburban and regional rail passenger services to persons with limited mobility. The case is pending before the Constitutional Tribunal.

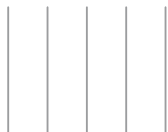
C. Preventing discrimination on grounds of age

Joining in the celebration of the European Year for Active Ageing and Solidarity between Generations, the Defender launched a broader project on intergenerational dialogue as one of the important instruments of social participation of seniors. Under the project, two conferences were organised, accompanied by workshops. During the two meetings the results of social studies commissioned by the Defender entitled *Seniors in the eyes of young people, young people in the eyes of seniors* were presented. The purpose of the study was to identify the impact of mutual perceptions of people belonging to different generations on the development of their mutual relations. The study also identified some possible planes of genuine reconciliation and understanding between the young and the old.

The Defender also petitioned the Minister of Health on the provision that defines the maximum age of a pharmacy manager contained in the Pharmaceutical Law. In view of changes in the retirement age, which will be at least 67, the solution of the Pharmaceutical Law, according to which the pharmacy manager may be a pharmacist who is up to 65, is considered inadequate with socio-economic realities, as well as the requirements of the law. The Defender's view on this issue is consistent with the position of the Polish Pharmaceutical Chamber. The Minister of Health declared that the Minister of Labour and Social Policy announced that the age limits for pharmacy managers would be abolished.

The cases examined by the Defender revealed 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 lack of access to banking products due to exceeding certain age as discrimination. The Expert Committee on Elderly People drafted *inter alia* the *Financial Services* guide that covers issues related to the exclusion of elderly people from the market of banking services, with particular focus on access to loans, credits and current accounts.

In 2012, as part of the tasks related to the function of independent equality body, the Defender commissioned a social survey on discrimination of seniors in the market of financial services and on violence against senior women and women with disabilities.





For the past several years, the Defender has repeatedly indicated the need for adequate facilities for the elderly and for persons with disabilities in the electoral process, basing it on the provisions of the Constitution. To summarise the current activities and achievements, the Defender drafted a report entitled *The Principle of Equal Treatment – Law and Practice. The Guarantees of Exercising the Voting Right by the Elderly and by Persons with Disabilities. Analysis and Recommendations*. The report describes the adaptation of election procedures as well as polling stations, and other organisational and technical issues relevant to the vote. One of the most important aspects of the preparations for elections is the way of informing the public about current regulations and procedures relating to forms of voting, such as proxy voting, voting by mail, and voting with covers in Braille.

D. Preventing discrimination on grounds of sex

2012 was particularly significant in terms of prevention of violence against women as Poland signed the Council of Europe Convention on preventing and combating violence against women and domestic violence.

As part of the tasks related to the function of independent equality body, in 2012 the Defender commissioned a social survey on violence against senior women and women with disabilities. The survey focused on the aspect concerning the knowledge of law by members of interdisciplinary teams, and the specific nature of preventing violence in a situations of cross-discrimination: on grounds of sex, age and disability. The report on survey results, accompanied by an analysis of the existing system of preventing violence against elderly women and women with disabilities, along with recommendations in this area, will be published in 2013.

The obligation of public authorities to undertake pro-active measures to ensure gender equality and counteract discrimination on grounds of sex results from both the Polish Constitution and Poland's membership in the European Union. Imbalances in filling senior positions in enterprises based on sex is currently a major challenge in all Member States of the European Union. In Polish business, there are women who influence major economic and financial decisions, yet their number is much lower than that of men. Changes aimed to ensure effective gender equality should be gradual and evolutionary, and should be introduced by promoting good practices. Yet, where such solutions are futile, it is also necessary to introduce legislative changes. The Defender takes the opinion that the Polish Parliament should consider introducing statutory regulations on the composition of management and supervisory boards of public companies. The Defender inquired if the Council of Ministers planned to take a legislative initiative on the matter. In reply, the Government Plenipotentiary for Equal Treatment declared that the Parliament of the Republic of Poland had received the proposal for a Directive of the European Parliament and of the Council on



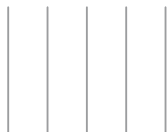
improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures. The draft position of Poland expressed support for the basic proposal. At the same time it was found that a realistic goal seems to be 35%, assuming that this will be accompanied by other measures to promote the participation of women in economic decision-making, such as mentoring, networking, training schemes and mechanisms to facilitate reconciliation of professional and family roles.

The requests filed to the Defender frequently concern the problem of discriminatory content of TV commercials. Women tend to be treated like objects in this context. This concerns instances of treating women as sexual objects and assign them clearly stereotypical social roles. In the light of the above, the Defender petitioned the Head of National Broadcasting Council on the content of commercials that is discriminatory towards women. The Head of National Broadcasting Council explained he had no statutory authorisation to influence the authors of commercials or campaigns of radio and TV broadcasters. National Broadcasting Council takes steps when a specific commercial undoubtedly braches the norms inscribed in the Act on broadcasting.

Complaints to the Defender also concerned the lack of uniform criteria for recruitment by the State Fire Service. According to the Defender, the recruitment announcement was worded in a way that gives rise to discrimination on grounds of sex, because it was addressed only to men. In response, the Minister of the Interior stated that having analysed the problems within the Ministry, he requested the Chief of State Fire Service to prepare relevant draft amendments, and submit them to the Ministry, together with regulatory impact assessment.

E. Preventing discrimination on grounds of sexual orientation or gender identity

The Human Rights Defender again petitioned the Minister of Justice on the progress of work on the regulation on legal status of transsexual persons. The Minister of Justice agreed with Defender's opinion on the need to adopt the legal act in question. At the same time, the letter made a sceptical reference to the idea of amending Vital Records Law because, as stated, this change would be purely procedural. The Defender did not agree with the above position Change in the procedure from process to non-process would bring about a number of benefits for people who wish to change their gender in identity documents. Under such procedure, the court decides to rectify the birth certificate not, as it is the case at present, to establish that a given person is of particular gender, and consequently decides on the protection of personal interest as a result of a civil action. In addition, in the current state of affairs, the parents of a transsexual person are the defendants, and must participate in the trial. Under the non-process procedure, the parents would have an opportunity to opt out





from the proceedings, thus not becoming its participants. Complaints filed to the Defender, mainly relating to the procedure, suggest that such a change would solve a lot of problems that are still painful in family relationships in such cases.

The Defender is aware of the problem of discrimination of non-heterosexuals during medical appointments. For that reason, the Defender commissioned a social survey on *Doctors in the Process of Specialisation and Non-heterosexuals*. The survey was intended to initially examine equal treatment of non-heterosexuals in medical treatment. The topic will be examined further in 2013.

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

The Defender continued to monitor the issue of organising lessons in religion and ethics in schools as well as of executing the verdict of the European Court of Human Rights in Strasbourg in the case *Grzelak vs. Poland*. The Defender asked the Minister of National Education for detailed information on the manner in which the guidelines provided in the verdict would be implemented. In response, the Minister stated that the European Court of Human Rights ruled that the reason for violating the Convention for the Protection of Human Rights and Fundamental Freedoms was the inappropriate practice of applying regulations by educational establishments. Therefore, the Ministry of National Education, with participation of school superintendents, will monitor the organisation of classes in ethics, analyze the need for further action, and provide assistance in case of difficulties faced by those interested in attending classes in ethics. On the initiative of the Defender, the Department of Proceedings before International Human Rights Protection Bodies of the Ministry of Foreign Affairs organised a meeting with representatives of the Ministry of National Education to take further actions to implement the system aspects of the ECHR verdict in the said case.

The Human Rights Defender received more complaints from members of Seventh-day Adventist Church about the dates of entry examinations for solicitors' trainings, which currently are organised solely on Saturdays, which makes it impossible for persons for whom Saturday is a very important holiday to take such examinations. The Defender petitioned the Minister of Justice on the issue, who replied that the current regulation does not provide for the possibility to change the examination dates. The postulated change in the date of examination in the course of preparations seemed impossible, and could breach the principle of citizens' confidence in public authority.

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7. Statistical information

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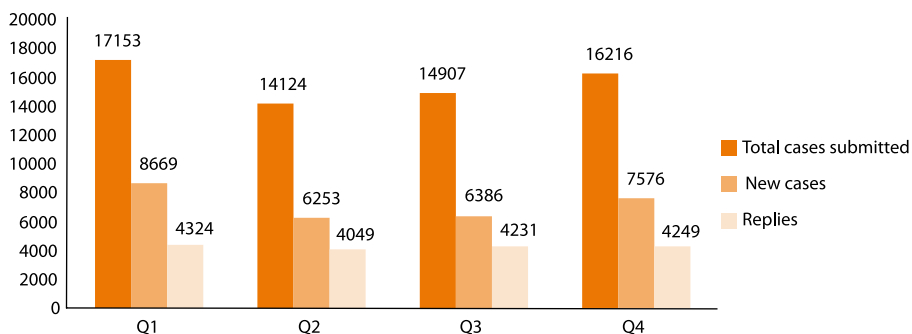


Cases submitted to the Office of the Human Rights Defender

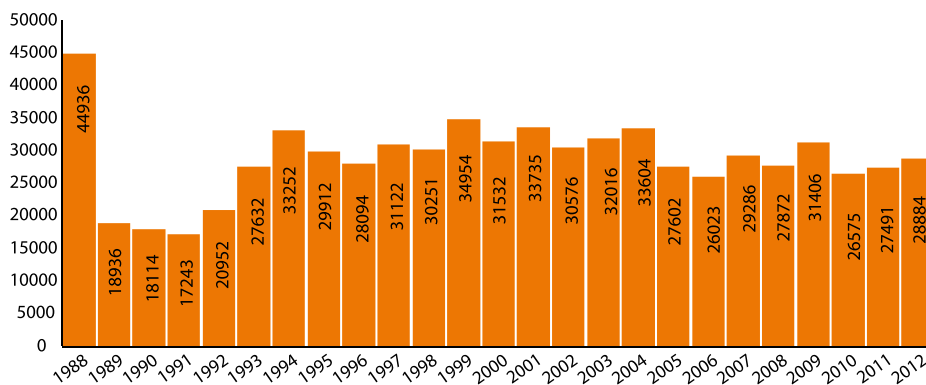
	2011 1.01.–31.12.	2012 1.01.–31.12.	%	Entire operation period of the HRD (1.01.1988–31.12.2012)
Total number of cases received	58,277	62,400	+7.1	1,221,019
Number of new cases	27,491	28,884	+5.1	722,000
Number of replies to the Defender's petitions	16,972	16,853	-0.7	402,698

In 2012, the Office of the HRD received 6,251 applicants and answered 22,633 phone calls, providing advice and information.

Cases submitted to the Office of the HRD in 2012



Total number of new cases in the years 1988–2012





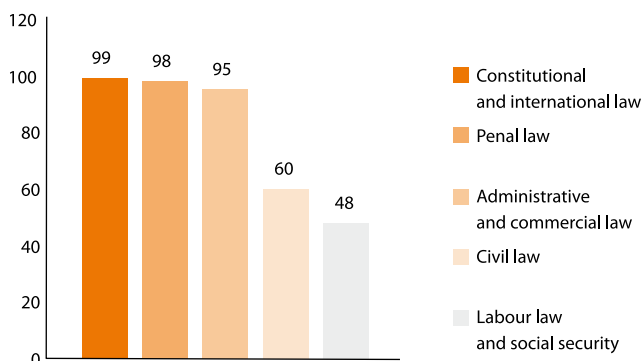
The Human Rights Defender: 2012

1) made interventions concerning systemic problems – including motions to take a legislative initiative	292 151
2) submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a higher level act	19
3) made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	12
4) addressed juridical questions to the Supreme Court	6
5) made cassations	43
6) filed cassation appeals with the Supreme Court in civil cases	2
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	2
11) filed complaints with Voivodeship Administrative Courts	23
12) joined court proceedings	8
13) joined administrative proceedings	11

Of 422 general petitions and special appeal measures made by the Defender in 2012, the majority concerned the following:

Problem area	Number	%
Constitutional and international law	99	23.5
Penal law	98	23.2
Administrative and commercial law	95	22.5
Civil law	60	14.2
Labour law and social security	48	11.4

General petitions by problem area



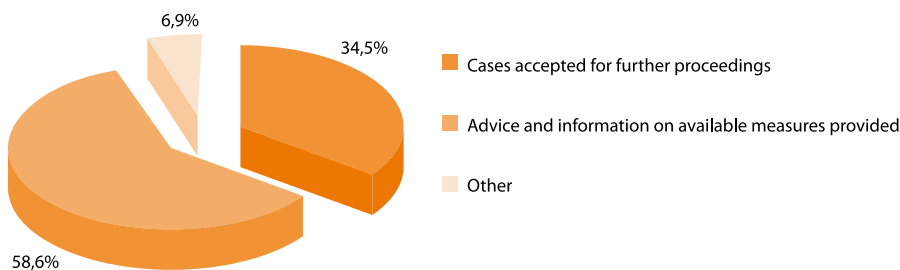


Cases examined in 2012

In the period covered by this Report, 32,224 new cases were examined, of which:

1	Manner of investigation	Number	%
1	2	3	4
Cases accepted for further proceedings	1 Total	11,094	34.5
	2 accepted for further proceedings including: on the initiative of the HRD	8,670 527	27.0
	3 as general petitions	2,424	7.5
Advice and information on available measures provided	4 Total	18,882	58.6
	5 advice and information on available measures provided	18,882	58.6
Other	6 Total	2,248	6.9
	7 complaint referred to a competent authority	529	1.6
	8 complaint returned to be supplemented with necessary information	652	2.0
	9 not accepted for further proceedings	1,067	3.3
Total		32,224	100.0

Manner of investigation in 2012



Of the 32,224 complaints examined by the HRD, the majority concerned the following:

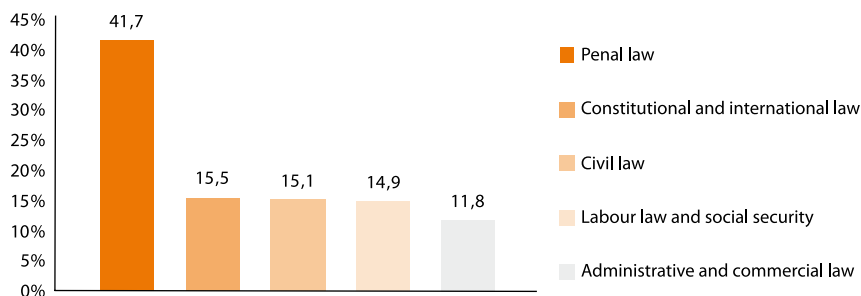
Problem area	Number	%
Penal law	12,211	37.9
Civil law	6,635	20.6
Labour law and social security	5,129	16.0
Administrative and commercial law	5,073	15.7
Constitutional and international law	2,743	8.5
Other	433	1.3



Of the 32,224 complaints examined in 2012, 11,094 were accepted for further proceedings and mainly concerned the following:

Problem area	Number	%
Penal law	4,623	41.7
Constitutional and international law	1,719	15.5
Civil law	1,676	15.1
Labour law and social security	1,651	14.9
Administrative and commercial law	1,311	11.8
Other	114	1.0

Cases examined by problem area

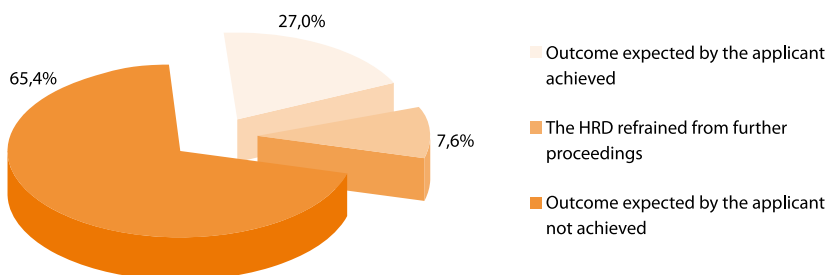


Proceedings were completed in 10,227 cases undertaken in 2012 and in previous years

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant and the HRD achieved	1	Total (2+3)	2,756	27.0
	2	Applicant's claims confirmed	1,051	10.3
	3	General petition of the HRD acknowledged	1,705	16.7
Proceedings discontinued	4	Total (5+6)	777	7.6
	5	Proceedings pending (ongoing procedure)	387	3.8
	6	The HRD refrained from further proceedings (objective reasons)	390	3.8
Outcome expected by the applicant not achieved	7	Total (8+9+10)	6,694	65.4
	8	Applicant's claims not confirmed	6,001	58.6
	9	General petition of the HRD not acknowledged	604	5.9
	10	Measures available to the HRD exhausted	89	0.9
Total			10,227	100.0



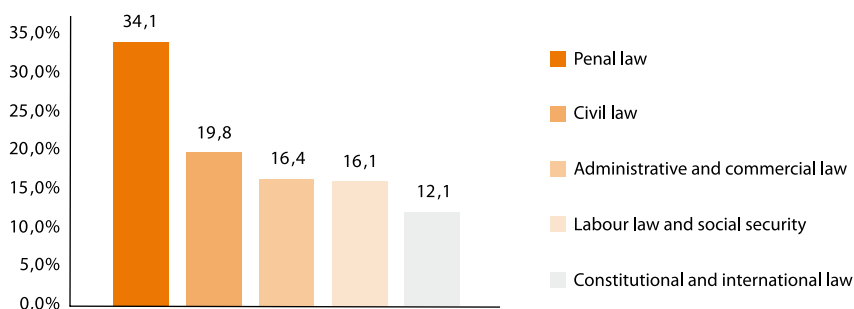
Completion of cases undertaken



Problem areas targeted by new cases (applications) in 2012

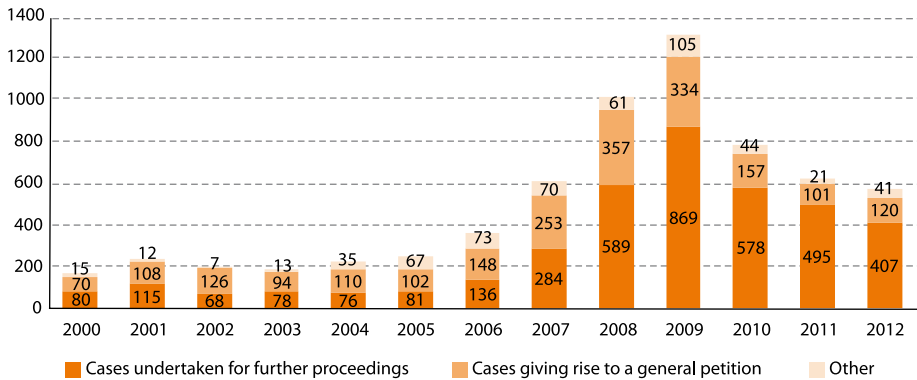
	Problem area	Number	%
1	Constitutional and international law	3,507	12.1
2	Penal law	9,852	34.1
3	Labour law and social security	4,659	16.1
4	Civil law	5,707	19.8
5	Administrative and commercial law	4,736	16.4
6	National Preventive Mechanism	184	0.7
7	Other	239	0.8
8	Total	28,884	100.0

Major problem areas targeted by new cases in 2012

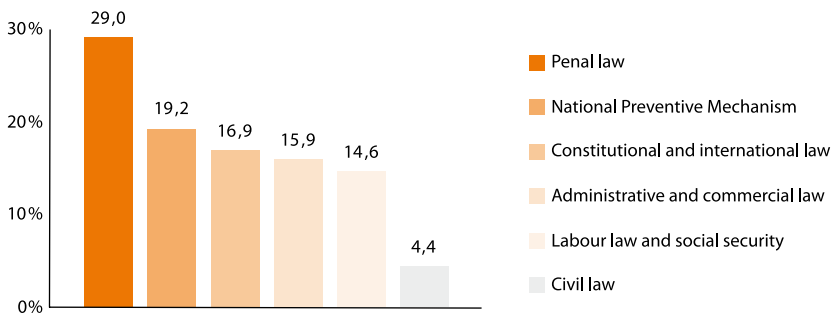




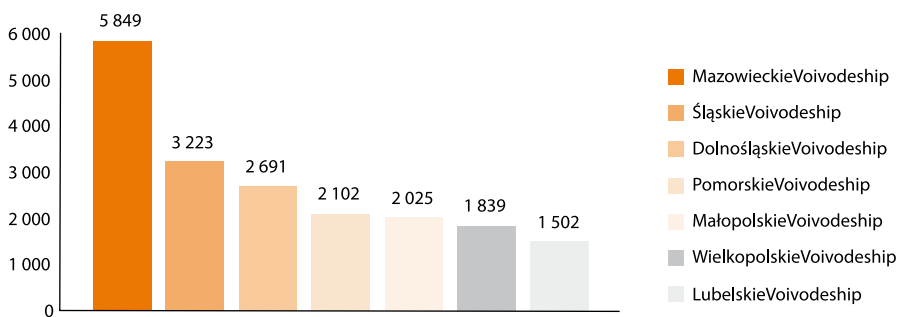
Cases initiated by the HRD



Cases initiated by the HRD by problem area

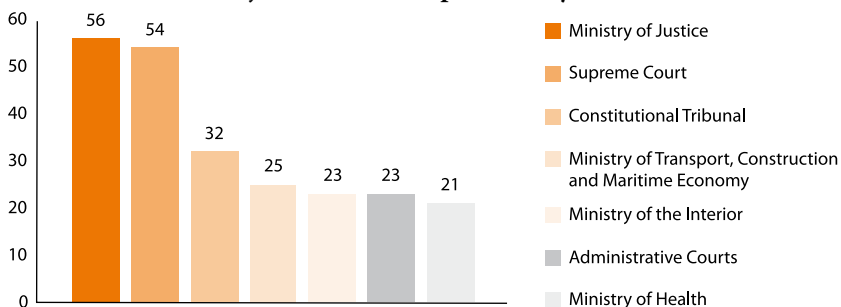


Greatest number of new cases by particular voivodeships

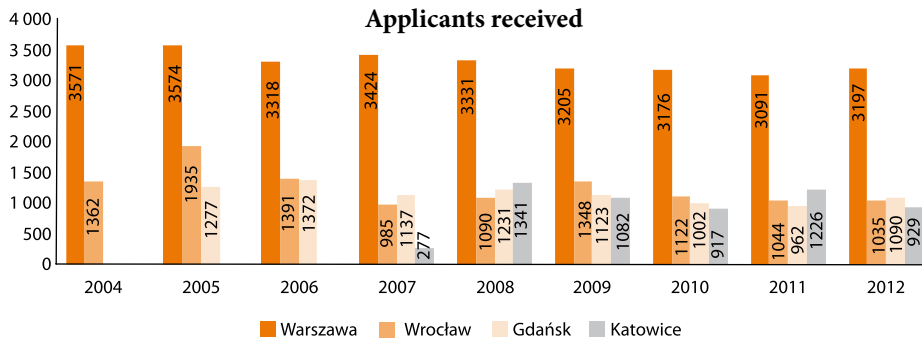




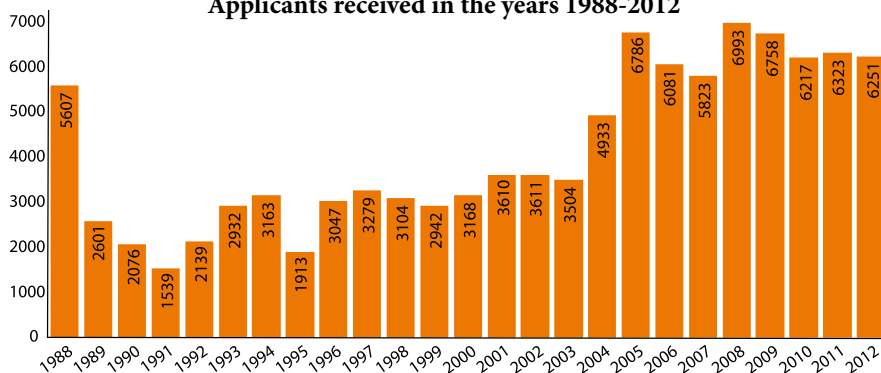
Major addressees of petitions by the HRD



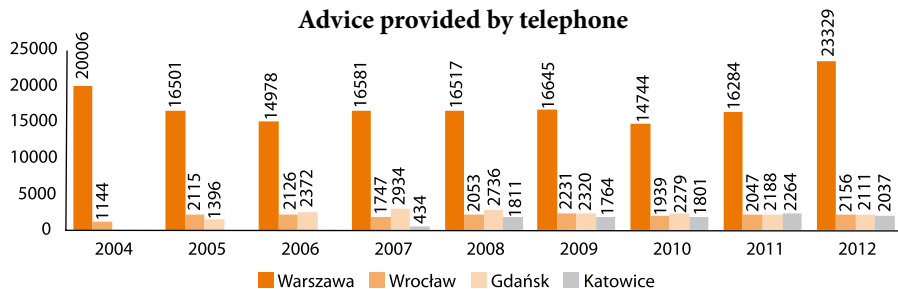
Applicants received



Applicants received in the years 1988-2012

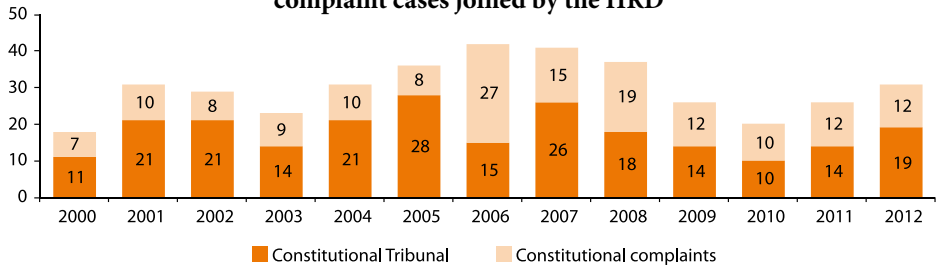


Advice provided by telephone

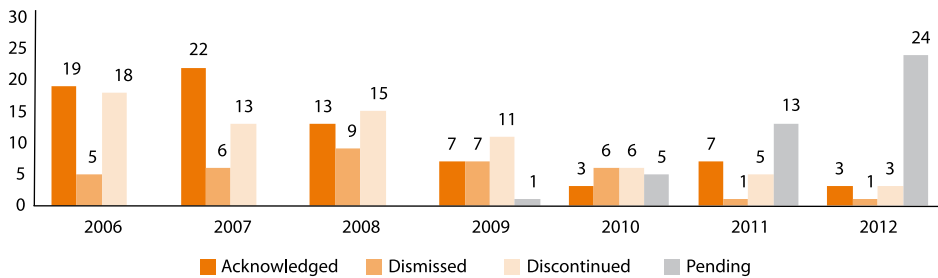




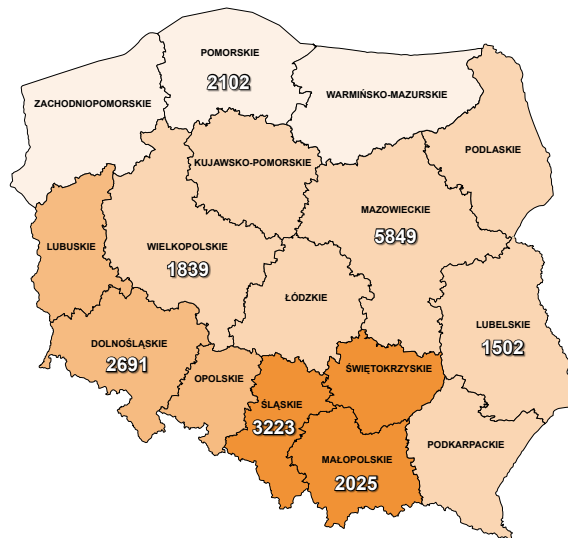
Motions to the Constitutional Tribunal and proceedings in constitutional complaint cases joined by the HRD



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 in particular years⁴

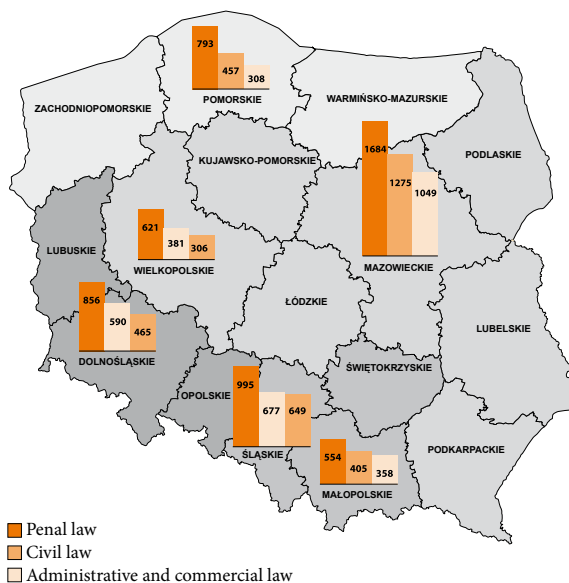


The largest number of new cases by particular voivodeships in 2012



⁴ As at 31 December 2012.

Major problem areas targeted by new cases in voivodeships with the greatest number of new cases in 2012



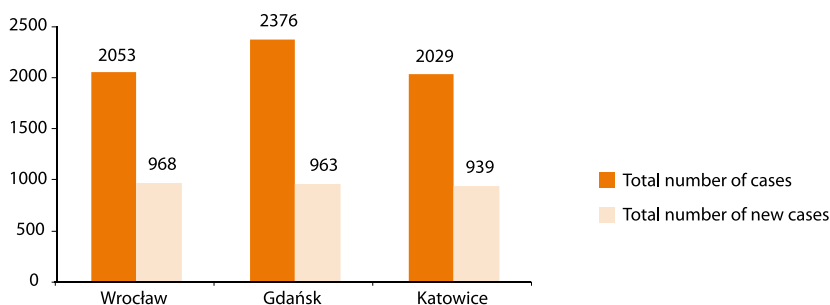
Offices of Local Representatives



- Office of Local Representative in Wrocław, established on 2 August 2004
- Office of Local Representative in Gdańsk, established on 16 May 2005
- Office of Local Representative in Katowice, established on 14 September 2007
- Office of the Human Rights Defender in Warsaw



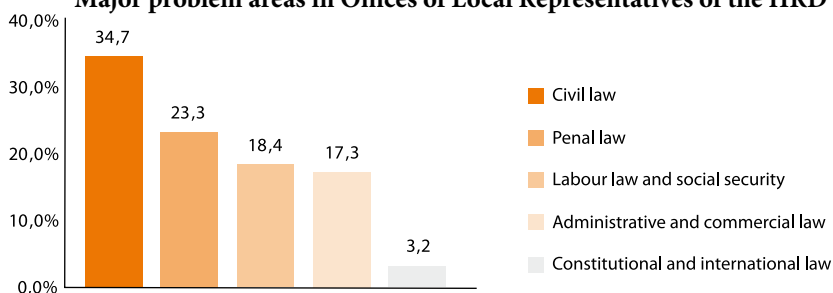
Number of new cases filed to the Offices of Local Representatives



The majority of new motions filed with Offices of Local Representatives concerned the following:

Problem area	Number	%
Civil law	996	34.7
Penal law	669	23.3
Labour law and social security	529	18.4
Administrative and commercial law	495	17.3
Constitutional and international law	91	3.2

Major problem areas in Offices of Local Representatives of the HRD



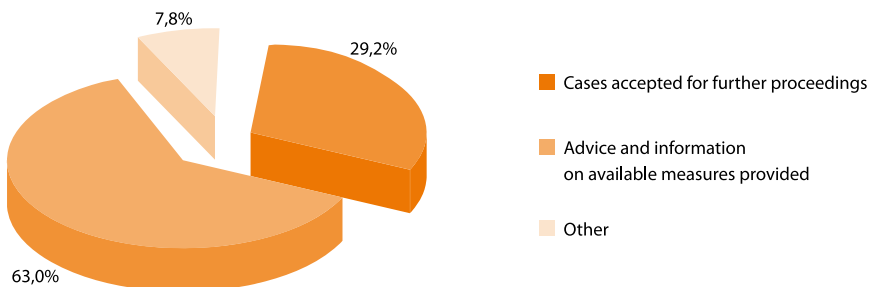
During the period covered by this Report, 3,199 new cases were examined by the Offices of Local Representatives, of which:

Manner of investigation	Number	%
– Cases accepted for further proceedings	933	29.2
– Advice and information on available measures provided	2017	63.0
– Complaint referred to a competent authority	71	2.2
– Complaint returned to be supplemented with necessary information	30	1.0
– Not accepted for further proceedings*	148	4.6

* Incomprehensible complaints and letters submitted to other bodies and notified to the Defender.



Manner of investigation by Offices of Local Representatives of the HRD



Offices of Local Representatives completed proceedings in 906 cases undertaken in 2012 and in previous years

Results	Manner of completion		Number	%
	1	2		
Outcome expected by the applicant achieved	1	Total (2+3)	202	22.3
	2	Applicant's claims confirmed	182	20.1
	3	General petition of the HRD acknowledged	20	2.2
Proceedings discontinued	4	Total (5+6)	67	7.4
	5	Proceedings pending (ongoing procedure)	40	4.4
	6	The HRD refrained from further proceedings (objective reasons)	27	3.0
Outcome expected by the applicant not achieved	7	Total (8+9+10)	637	70.3
	8	Applicant's claims not confirmed	558	61.6
	9	General petition of the HRD not acknowledged	8	0.9
	10	Measures available to the HRD exhausted	71	7.8
Total			906	100.0

Completion of cases undertaken by Offices of Local Plenipotentiaries Representatives of the HRD

