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(Ombudsman
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Summary of Report on the activity of the Human Rights Defender (Ombudsman of the Republic of Poland) in 2010

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SUMMARY

of Report on the Activity

OF THE HUMAN RIGHTS DEFENDER

(Ombudsman
of the Republic of Poland)

IN 2010

Warsaw, June 2011

Table of contents

INTRODUCTION

The year 2010 was exceptional for the institution of Polish Human Rights Defender. On 10 April 2010, the term of Janusz Kochanowski as Human Rights Defender was suddenly brought to an end when he died in the Smolensk air crash. Between 11 April 2010 and 20 July 2010, the Defender's duties were taken over by Stanisław Trociuk, Deputy Human Rights Defender. The Sejm, upon consent of the Senate, appointed Irena Lipowicz as the Human Rights Defender. She took the office on 21 July 2010, after having taken the oath. As you can see, that was a dramatic and not at all typical year during which three Defenders held the office, one after another.

The new Defender focused on the problems of the elderly and the disabled, as well as of the foreigners staying in Poland. The Human Rights Defender declared she would be taking numerous initiatives to ensure more efficient protection of the rights of those social groups, including actions taken ex officio. The Defender appointed expert committees whose task would consist in formulating postulates on the improvement of actual and legal situation of the elderly, the disabled and foreigners. It should be stressed that in December 2010, the Social Council was established at the Office of the Human Rights Defender. It is comprised of persons with great professional achievements and social authority who agreed to support, provide opinions and inspire the activity of the Defender.

The Human Rights Defender acts mainly on the basis of motions she receives. That is one of constitutional measures for the protection of rights and liberties infringed by public authorities. The motion is free of charge and does not have to take any particular form. Therefore, citizens and foreigners addressed the Human Rights Defender in 56,641 cases in 2010, including 26,575 new cases. In the period covered by the Information, Office personnel also consulted 6,217 persons who visited the Human Rights Defender's Office and provided advice, information and explanations on the phone in 20,763 cases. The passing away of dr Kochanowski resulted in the reduction in the number of cases submitted for several months – a natural circumstance in such a personalised office.

The Act enables the Human Rights Defender to act ex officio. In 2010, 779 cases were examined under the procedure. The impulses for their examination came mostly from press, radio and TV announcements. The Defender acted ex officio also in relation to information on extraordinary events and as a result of preventive visits to prisons, mental hospitals, military units, etc. Review meetings with ministers, organised every six months to accelerate the proceedings, have become a new element of the Defender's work.

Executing her constitutional duties, the Human Rights Defender investigates whether the activity of bodies, organizations or institutions obliged to observe and execute human and civil rights and liberties infringes the law, the principles of community life and social justice. In the period covered by annual Information, 34,248

new cases were investigated. As a result of their analysis, 11,810 cases were investigated by the Defender, whereas in 20,360 cases information about measures the applicants were entitled to was provided. Moreover, in 550 cases the applicants were asked to supplement their motions, whereas 545 cases were referred to competent authorities. In 983 cases no actions were taken. The vast number of cases where applicants were provided with information on measures they were entitled to shows that legal awareness among persons addressing the Human Rights Defender is low and that no universal and efficient legal assistance system has been created so far. Therefore, by addressing the Human Rights Defender, many people only wish to obtain legal advice. Thus, in more than a thousand abovementioned cases, the Defender substitutes for the nonexistent legal assistance and information system.

Among the cases investigated by the Human Rights Defender, a result favourable to the applicant was achieved in over 17% of cases, while in 73% of cases the result expected by the applicant was not achieved, mostly due to the fact that in the course of explanatory proceedings by the Defender the alleged infringement of rights or liberties had not been confirmed. On the other hand, in over 9% of cases the Human Rights Defender refrained from further investigation due to objective obstacles, including lack of measures in her disposal by means of which she could successfully remove the infringement (e.g. expiry of the time limit to submit an appeal). 17-20% of faulty resolutions eventually withdrawn from legal affairs is a typical result for e.g. administrative courts. My wish is to achieve the level of approx. 20%.

In 2010, the Human Rights Defender referred 293 petitions concerning specific problems to competent authorities. They were referred to the authorities when individual cases revealed an established practice of applying the law in a way that infringes human rights or liberties and when cases investigated by the Human Rights Defender showed that the source of the infringement of individual's rights was not a faulty application of the law but deficiency of the law itself. As regards the latter, in 2010 the Human Rights Defender lodged 95 petitions for a legislative initiative, which proves a high degree of legislative dysfunction. We need to bear in mind that the authority petitioned by the Human Rights Defender must issue its position on the assessments, comments and opinions of the Defender. However, if the authority does not agree with these assessments, it only provides the Defender with its position since it is not bound by the Defender's position to take a legislative initiative. Yet, the authority needs to take into account that in case it does not consider the Defender's position included in the petition when accused of incompatibility of a normative act with a superior act or the Constitution, the Defender may take a procedural measure in the form of referring the case to the Constitutional Tribunal. In 2010, the Human Rights Defender lodged ten applications to verify normative acts with regard to their compliance with superior regulations or the Constitution to the Constitutional Tribunal. The Defender also took part in ten proceedings before the Tribunal as a result of a Constitutional complaint.

The activity of judicature can also result in infringement of individual's rights. In practice, inconsistent interpretation of the law by courts leads to the infringement of the principle of equality before the law. It is so when different judicial decisions are issued in identical factual and legal situations. Therefore, bearing in mind the principle of equality before the law, the Human Rights Defender takes actions to ensure uniformity of the body of verdicts. Due to divergences in the body of verdicts of common courts, in 2010 the Human Rights Defender referred six legal inquiries to be solved by the extended formation of the Supreme Court. The Human Rights Defender also referred three legal inquiries to be solved by the Supreme Administrative Court. I will try to expand this area of my activity.

Cassation is the last resort of many citizens addressing the Human Rights Defender. In 2010 the Human Rights Defender lodged 64 cassation appeals to legally binding rulings of lower instance courts to the Supreme Court (including 61 cassation appeals in criminal cases) pleading the infringement of procedural or substantive law provisions, the direct result of which was an infringement of individual's rights. The Defender also lodged one cassation appeal to the Supreme Administrative Court and nine appeals to Regional Administrative Courts, while in seven cases the Defender took part in proceedings before common and administrative courts. Errors made by attorneys – legal counsels and solicitors – providing legal assistance are a new problem; they often lead, among others, to delays in lodging cassation appeals thus preventing the Human Rights Defender from taking any actions.

The Human Rights Defender's cooperation with associations, civil movements, other community associations and foundations for the protection of freedoms, human and civil rights was intensive. The Defender and personnel of the Office of the Human Rights Defender took active part in conferences, seminars, debates and lectures devoted to taking actions to improve the observance of human rights and liberties in Poland and worldwide. The Defender organised, among others, panel meetings and initiated social debates on topics such as: "The right of students to an ethics course" and "Billings, invigilation and public interest." On the International Human Rights Day in December 2010, the Human Rights Defender organised a seminar entitled "Contemporary social rehabilitation methods." It should be noted that the formula of the annual Paweł Włodkowic Award granted by the Human Rights Defender was changed – its 2010 laureate was Ms Lidia Olejnik, Director of the Lubliniec Prison.

As part of Crime Victims Day 2010, the Human Rights Defender organized a conference in Warsaw entitled "Against Domestic Violence. Hands Are For Hugging." It needs to be emphasized that the fundamental problem highlighted by participants was denying the victim the status of a party to the proceedings of concern, the problem of limiting access of the majority of victims to state redress for victims of crime and unfriendly treatment of the victim, particularly children. In this context, it is worth stressing that the Human Rights Defender started close cooperation with Nobody's Children Foundation by organizing joint conferences and actions promoting e.g.

friendly interrogation rooms for children. Detailed information on the activity of the Human Rights Defender for the victims of crime is available at www.rpo.gov.pl and www.pomoc.rpo.gov.pl.

For ten years now, the Movement against Social Perplexity has been one of the most important forms of the Human Rights Defender's cooperation with associations and foundations acting for the protection of human and civil rights and liberties. As the year 2010 was the European Year for Combating Poverty and Social Exclusion, the battle against poverty has been given priority in all EU Member States. It should be emphasised that in 2010, as a part of Polish celebrations of the 23rd International Day for Combating Poverty, 10th jubilee convention of the Movement against Social Perplexity was organized by the Human Rights Defender. It was an opportunity to thoroughly evaluate social policy and the problem of poverty in Poland. The discussions and the exchange of experience between numerous participants resulted in many conclusions and recommendations which were provided to various state authorities, local authorities and social institutions. The discussion developed into a session devoted to medical aid for the homeless.

The year 2010 was the third year when the Human Rights Defender performed the tasks of the National Prevention Mechanism, yet without a proper budget. Representatives of the Human Rights Defender visited 80 detention centres across the country. Compared to 2009, the number of visits decreased by 26 for the reason that the Human Rights Defender's budget for 2010 was reduced by PLN 1.3 million, i.e. by nearly the entire amount allocated for the National Prevention Mechanism in 2009. It is noteworthy that entrusting the Human Rights Defender with the function of the National Prevention Mechanism, i.e. imposing additional competences and duties, was not followed by sufficient funding. A partial subsidy from the budget reserve was granted in the first year of the Mechanism's operation, but the majority of its operational costs were covered from the Office's own funds, at the expense of other activities. Unfortunately, financial limitations result in significant disturbances of multiannual planning as regards preventive visits to each of 1,800 detention centres (within the meaning of OPCAT). It is all the more painful as the Ministry of Finance's refusal to finance the National Prevention Mechanism from the Sejm Chancellery reserve forces me to suspend the visits to prisons right before the Polish Presidency of the EU Council. This situation may serve as grounds for undermining the reliability of Poland and its determination to implement mechanisms for the protection of human rights agreed at the international level.

Operation of the National Prevention Mechanism is also one of the platforms of international cooperation of the Human Rights Defender. Due to starting the project of cooperation between "national prevention mechanisms" functioning under the Council of Europe, three conferences in the form of thematic workshops for the representatives of European national mechanisms were organised in 2010 (in Albania, Italy and Armenia). Moreover, the Polish National Prevention Mechanism operating

since 2008 has been included in *On-site visit & Exchange of experiences* programme, i.e. a specialist training workshop. Experts of the European Committee for the Prevention of Torture (CPT), the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the Council of Europe discussed the details of the National Prevention Mechanism and visits to detention centres with the personnel performing its tasks.

The implementation of the "Partnership for Human Rights – Poland – Georgia – Moldova" project in 2010 as a part of a broad Cooperation Programme of Human Rights Defenders of Eastern Partnership States was of extraordinary significance for the popularization of international human rights standards by the Human Rights Defender. The project was implemented in two stages. In the framework of the first stage, international expert meetings were held in Georgia and Moldova. Between 9 and 15 May 2010 an international seminar was held in Chisinau. Between 10 and 16 October 2010 an international seminar was organized in Tbilisi, attended by the Human Rights Defender from Georgia, Parliamentary Solicitors from Moldova, Mediator of the French Republic and Polish experts from the Office of the Human Rights Defender. The meetings were aimed at exchanging experiences in the area of human rights protection in various thematic areas constituting the subject of the programme. During the second stage, between 15 and 19 November 2010 the Human Rights Defender organised international seminars in Krakow and Warsaw to sum up the project's implementation in 2010. The seminar was attended by Human Rights Defenders from Georgia, Moldova, France and Poland. The seminar's agenda included a presentation of solutions in force in the European Union as well as an exchange of experiences and good practices applied by national institutions for the protection of individual's rights. The implementation of the project resulted in the exchange of knowledge and experiences between experts from particular institutions for human rights protection, it also contributed to building the image of Poland as a country willing to share democratic values and acting for the strengthening of fundamental rights' protection in Europe. The Human Rights Defender of the 6th term decided to continue the implementation of the Cooperation Programme of Human Rights Defenders of Eastern Partnership States. Therefore, in December 2010 the Human Rights Defender lodged an application for funds for the "Partnership for Human Rights – Poland – Armenia – Azerbaijan" cooperation project for the year 2011, which will constitute yet another stage of cooperation between individual's rights protection institutions of countries east of the European Union.

On 3 December 2010, the Act implementing certain European Union regulations concerning equal treatment was passed[1]. It completed several years' work for the provision of adequate legal protection against unequal treatment, including through

[1] Dz.U. No 254, item 1700.

the implementation of appropriate EU regulations. The Act has a narrower normative range than initially assumed as the so-called horizontal act was replaced by the legislative act ensuring minimum standards required by the European Union. A different protection range depending on the reason – the feature of the person who fell victim to unequal treatment and the area of discrimination – raised doubts as early as during parliamentary work on the Act because a legislative act providing equal protection against any discrimination in political, social and economic life (Article 32 of the Constitution) was expected. The Act lays down new tasks of the Human Rights Defender. The legislator failed to appropriately assess the possible effects of the regulation and has not foreseen the need to secure funds that would be adequate to the Defender's tasks. Apart from the Government's Plenipotentiary for Equal Treatment, since 1 January 2011 the Human Rights Defender has become an independent body for equality in the meaning of European Union directives. Therefore, save for her current tasks and competences, the Human Rights Defender is now obliged to:

1. Analyse, monitor and support equal treatment of all individuals,
2. Carry out independent studies on discrimination,
3. Draw up and publish independent reports and recommendations concerning problems related to discrimination,
4. Cooperate with associations, civil movements, other voluntary associations and foundations as well as foreign and international bodies and organizations for equal treatment on a regular basis,
5. Carry out additional information-related tasks which consist in providing annual information to the Sejm and the Senate on the Defender's activity and the degree to which human and civil rights and liberties are observed, including the provision of:

– Information on activities in the field of equal treatment and their results,
– Information on the observance of the equal treatment principle in the Republic of Poland, drawn up, in particular, on the basis of independent studies carried out by the Human Rights Defender,
– Conclusions and recommendations concerning actions to be carried out in order to ensure the observance of the equal treatment principle.

Unfortunately, the 2011 Budget Act does not grant any funds for this activity of the Defender (it concerns, inter alia, remunerations), which will undoubtedly adversely affect the execution of new statutory tasks and their scope. In this regard, the Defender addressed, among others, the Marshal of the Sejm, arguing that imposing new duties on the Defender without adequate funding may result in incomplete performance of the obligations resulting from Poland's membership in the European Union (in terms of effective, not only formal, implementation of EU legislation), which in consequence poses a threat of high fines imposed by EU authorities. Regardless of the above, it must be emphasized that Defender's inability to efficiently execute new statutory tasks will adversely affect the improvement of individual's rights protection in the field of equal

treatment. Even as the Marshal of the Sejm expressed his willingness to provide funds from the Sejm Chancellery reserve for this purpose, it turned out to be impossible in practice.

It is obvious that financial independence of the Human Rights Defender, which is questionable in the situation of imposing new tasks without securing adequate funds, is only one of the elements of the constitutional principle of Defender's independence. The institutional dimension of Defender's independence principle was handled by the Constitutional Tribunal. As a result of the examination of the Defender's motion, the Tribunal decided that the provision of Article 20(2) of the Act on the Human Rights Defender is incompliant with the principle of HRD's independence where it entitles the Marshal of the Sejm to provide the Office of the Human Rights Defender with a statute. The Constitutional Tribunal commented that the Defender's independence is of fundamental systemic significance. As the Defender is an independent body and the existence and proper organisation of professional resources affect the diligent execution of the Defender's duties, it should be assumed that the Defender should be free to define the structure and working methods of the personnel. The Defender's independence inscribed in the Constitution prevents the legislator from establishing structural and functional relations that could make the Defender dependent on other public authorities.

In the light of the above, the year 2010 should be considered extremely important for the strengthening of the systemic position of the institution of the Human Rights Defender, as well as expanding her competence. It was also a difficult year, taking into account the expanding gap between new tasks and shrinking funds. Restoring harmony and executive capacities of the Defender in the area is one of the important tasks for the year 2011.

1. MAJOR ISSUES CONCERNING CONSTITUTIONAL AND INTERNATIONAL LAW

A. Combating discrimination and implementing the principle of equal treatment

1. Combating discrimination of disabled persons

On the occasion of third anniversary of the adoption of the Convention on the Rights of Persons with Disabilities by the United Nations General Assembly, the Human Rights Defender repeated its request addressed to the Government Plenipotentiary for Disabled People and concerning the expected date of ratification of the Convention. The Defender emphasized that the binding legislation in Poland does not prevent actual discrimination of disabled persons in terms of i.a. their right to education, right to work or voting rights. The Defender also suggested that Poland should consider signing and ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities. The case is being monitored by the Defender.

In 2010, the Defender continued activities aimed at providing full voting rights to the disabled. Before the presidential election, employees of the Office of the Defender visited polling stations marked as adjusted to the needs of the disabled in 18 towns. They controlled 97 polling stations in total. The visits revealed than over one third of the inspected stations did not meet the requirements specified by the law. A day before the first round of local government election, representatives of the Defender carried out another control at those stations. Regrettably, 88% of them still did not meet the requirements specified by the law. The Defender presented the control results to the Chairman of the National Electoral Commission, the Minister of the Interior and Administration and the Government Plenipotentiary for Disabled People. The Defender monitors the issue.

Continuing the activities concerning the implementation of the principle of the so-called e-Accessibility of public institutions' websites, the Office of the Defender drew up a report on "Accessibility of public institutions' websites for blind people". The analysis covered 93 public Internet services and revealed that only a slight percentage of them were indeed accessible for visually impaired users. The Defender asked the Minister of the Interior and Administration to take into account the conclusions of the report during the work on implementation of the e-Accessibility principle. The Ministry informed the Defender that numerous measures were implemented to improve accessibility of websites for disabled people, by means of i.a. presenting and promoting the issue at conferences, workshops and working meetings attended and initiated by the Ministry officials.

The Defender also inquired into the legal situation of deafblind people in Poland. In her intervention addressed to the Minister of Labour and Social Policy, the

Defender pointed out that legal regulations do not address deafblindness as a unique and specific disability, but treat it as the simultaneous occurrence of two separate disabilities, i.e. blindness and deafness. This legal loophole results in difficulties for deafblind people in obtaining appropriate support instruments. The Ministry of Labour and Social Policy works on an amendment to the ordinance regulating the rules of disability assessment.

Responding to numerous complaints of deaf people, the Defender got involved in the actions for ensuring equal access of disabled persons to culture. The Defender intervened i.a. on the decision of the Board of Telewizja Polska S.A. on reducing the number of broadcasts adjusted to the needs of deaf viewers and supported the project concerning mandatory inclusion of Polish subtitles in films produced in Poland. The Defender emphasized that accessibility of audiovisual services is a prerequisite for giving disabled people equal opportunities and ensuring their full participation in social, political and cultural life. Unfortunately, the only reason for reducing the number of broadcasts adjusted to the needs of deaf viewers proved to be the difficult financial situation of the public broadcaster.

2. Combating age discrimination

The Defender's intervention addressed to the Minister of Justice concerned the protection of the rights of notaries public being over 70 years of age. The currently binding Law on notarial services requires the Minister of Justice to dismiss notaries public who finished 70 years of age. There are no similar regulations for representatives of other legal professions, i.e. solicitors or legal advisers. The Defender believes that such a situation may be a form of prohibited discrimination on the grounds of age. Unfortunately, the Minister of Justice did not share the view of the Defender and declared that the claim that dismissal of notaries public over 70 years of age was a case of age discrimination was totally unsubstantiated. The Ministry does not work and does not plan any work on amending the Law on notarial services. The Defender waits for the position of the National Council of Notaries on the matter.

3. Combating discrimination on the grounds of sexual orientation and sex identity

The Defender initiated permanent cooperation with non-governmental organisations associating LGBT (Lesbians, Gays, Bisexuals, Transgenders) persons. Acting on the problems reported, the Defender pointed out to the Chief Commander of the Police the necessity of appropriate trainings for the police officers on identification and efficient investigation of hate crimes and the procedures to be followed by the police officers with regard to LGBT persons, taking into account the problems specific

for this group. In reply, the Defender was informed that issues related to preventing homophobia-motivated crimes are discussed during trainings on combating discrimination. During the trainings, the police officers are informed about their obligation to treat everyone in the same way, without favouring or discriminating anyone.

B. Right to good legislation

In 2010, the Defender analysed how the central government authorities fulfilled their obligation to issue implementing regulations for legal acts. According to information obtained by the Defender, 185 authorisations to issue implementing regulations were not fulfilled as of 25 August 2010. An important problem is also the circumvention of certain legislative technique principles and requirements formulated in the judgments of the Constitutional Tribunal concerning the implementing regulations. Revealed errors and delays do not allow to properly apply the provisions of the act and thus do not provide legal certainty to citizens. The Defender presented the problem to the Head of the Chancellery of the Prime Minister. The Defender monitors the issue.

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

Having analysed legal regulations in force (e.g. Act on access to public information) and their implementation in practice by the relevant entities and courts, the Defender requested the Minister of the Interior and Administration to take actions aimed at ensuring efficient use of the right of access to information by all citizens. The Defender pointed to problems with interpretation of certain statutory terms, including the term "public information". The matters of concern include also the lengthy information granting procedure and inconsistent rules of charging fees for the provision of information. Another problem is the division of competence between administrative and common courts with regard to ruling on the refusal to provide public information. The Defender also emphasized the necessity to develop the method of granting public information without earlier request, i.e. Public Information Bulletins.

In 2010, the Defender dealt with the problem of rules governing the granting of public information by headmasters. Complaints addressed to the Defender revealed that numerous headmasters believed that they did not have the obligation to grant public information or did not treat information held by schools as public information.

The Defender also received reports about the cases where in order to obtain public information the requesting party had to prove his/her actual or legal interest and about excessively high fees charged for photocopies of requested documents. The Defender notified the Minister of National Education about revealed irregularities. The Ministry replied that the Minister will impose an obligation on chief education officers to discuss the issues related to granting public information with headmasters and to control the activities of headmasters in this regard.

The Constitutional Tribunal examined the motion submitted by the Defender in 2007 and concerning unconstitutionality of the article of the Code of Civil Procedure on injunctive relief consisting in the prohibition of publication in the cases concerning personal rights protection where the press is involved. According to the Defender, the presumption should be that each press publication is in the public interest and the court decision on the prohibition of publication should be used cautiously and only in exceptional circumstances. The Constitutional Tribunal ruled that the challenged provision was in breach of the Constitution.

D. Right to education

In 2010, the Defender initiated multifaceted actions aimed at ensuring actual availability of ethics classes in state schools. As a result of the judgment of the European Court of Human Rights of 16 June 2010 in the case of Grzelak vs. Poland, where the Court declared that Poland failed to offer courses in ethics for students who do not take religion classes, the Defender asked the Minister of National Education to present information about the Ministry's actions aimed at fulfilling the judgment of the Court. The Defender emphasized that although the judgment concerns an isolated case, it is of fundamental importance for education in Poland. On 21 October 2010, the Defender organised a debate on "The right of students to courses in ethics" During the debate with the academic circles, representatives of the Ministry of National Education and headmasters, numerous possible solutions were defined, including reduction or elimination of the required minimum number of students wishing to take courses in ethics, increasing the number of teachers with appropriate qualifications to teach ethics and introducing interactive forms of instruction.

The Defender also continued activities related to installing CCTV cameras at schools and other educational establishments. In a petition to the Minister of National Education, the Defender emphasized that the possibility to install visual monitoring at schools should be stipulated in regulations with the status of an act and the potential authorisation to issue implementing regulations must comply with the requirements specified in the Constitution. Furthermore, the regulations in force should be amended to limit the possibility to install CCTV cameras at schools and

educational establishments to the places explicitly defined in the legal regulations. The Defender received a reply stating that the Minister of National Education would analyse the arguments for introducing certain fundamental principles of using monitoring systems at schools and educational establishments to the Act on the Education System.

The Defender also informed the Minister of National Education about the problems concerning the lack of sufficient number of teachers with qualifications to deliver courses in IT, English, music, arts and science in rural gminas. The right to education enshrined in the Constitution guarantees children the possibility to obtain high quality education, irrespective of their place of residence. The Ministry informed the Defender that it undertook activities aimed at reducing this problem by creating conditions for educating teachers in more than one specialization and offering them a possibility to obtain additional qualifications to teach another subject.

The Defender monitors the issue of recruitment of secondary school graduates to higher education institutions. The complaints submitted to the Defender in 2010 reveal numerous problems concerning admissions of secondary school graduates to higher education institutions, such as inappropriate coordination of rules governing secondary school examinations and the admission procedure, the so-called conversion system discriminating against some groups of secondary school leavers, formal errors in the recruitment procedure and unjustified restriction of the grounds for appealing against decisions of the admissions committee. Another unresolved problem is unequal treatment of the so-called old secondary school graduates. The Defender petitioned on those issues to the Minister of Science and Higher Education and the Minister of National Education. The remarks of the Defender were forwarded to the rectors of higher education institutions with a request to take them into account upon adoption of resolutions on admissions in the 2011/2012 academic year and the following.

The Defender's petition to the Minister of Health focused on rules applied by medical universities with respect to admission for studies in English. Some higher education institutions require the candidates for such studies to have other citizenship than Polish. According to the Defender, such a requirement is discrimination on the grounds of nationality. As a result of the Defender's petition, the Minister of Health requested the rectors of medical universities to remove the questioned provisions from regulations on admissions.

E. Right to privacy

In 2010, the Defender submitted a petition to the Prime Minister on legislative initiatives of the government concerning the regulation of individual aspects of the citizens' activity on the Internet. The issues raised focused on data retention by

telecommunications operators, the Registry of Banned Websites and Services and amendments to copyright legislation concerning protection of intellectual property on the Internet. The Defender had concerns about the compliance of the above solutions with the constitutional system of human and citizen rights and freedoms. The Defender suggested to the Prime Minister that a greater coordination of government initiatives was needed, as well as increase in the participation of citizens by means of extended public consultation, including representatives of Internet communities. In reply, the Defender was informed that works were initiated with the aim to develop solutions enabling efficient prevention of crime on the Internet. The solutions are to be developed by the so-called Internet Group, which operates within the inter-ministerial Team for Preventing Copyright and Related Rights Violations chaired by the Minister of Culture and National Heritage.

F. Voting rights

As in previous years, the Defender sought to introduce the so-called alternative forms of voting to the Polish election law. In her petition to the Marshal of the Sejm, the Defender pointed to the need to amend the Electoral law for the Sejm and the Senate of the Republic of Poland, the Act on national referendum and the Act on local referendum in order to enable disabled and elderly people to use an assistant to vote. The solutions regarding persons being outside the country on the election day or those who for other reasons cannot come to the polling station are also difficult to accept. The adopted Electoral Code contains many solutions recommended by the Defender, including postal voting and the institution of an assistant in voting.

The legal situation of incapacitated persons is a problem as yet unsolved. The current legal system does not grant the right to vote to (partially and totally) incapacitated persons. The legislator did not differentiate between legally substantive prerequisites for incapacitation which means that all incapacitated persons are deprived of the right to vote, irrespective of the reason for incapacitation. Depriving the incapacitated persons of the right to vote automatically may violate the European Convention on Human Rights. The European Court of Human Rights has already ruled on a similar case against Hungary. The problem of inadequate protection of incapacitated persons was recognised also by the Polish Constitutional Tribunal and the existing legal solutions are increasingly often criticised by non-governmental organisations involved in the protection of the rights of disabled persons. Therefore, the Defender presented the problem to the Minister of Justice. In reply, the Defender received information that the Civil Law Codification Committee at the Minister of Justice worked on a new civil code, also with regard to provisions on incapacitation. The Committee suggested that only one form of legal incapacitation, i.e. total

incapacitation, should be maintained. The planned abandonment of partial legal incapacitation will considerably increase the number of persons entitled to use the voting rights.

G. Right to practice a profession and disciplinary proceedings

In 2010, the Defender received numerous complaints from persons seeking entry to the list of legal advisers, which concerned arbitrary fixing of fees related to the proceedings concerning the decision on the said entry by the National Council of Legal Advisers. The complainants claim that the fees are incommensurate with the labour input and expenditure and that the Council uses them to block access to the legal adviser profession. The Defender intervened on the matter to the Minister of Justice who shared her argumentation. As a result, a new resolution of the legal advisers' self-governing body entered into force on 1 January 2011, which specifies the fees for the entry to the list of legal advisers differently.

The Defender also responded to the problem reported by court trainees and concerning the lack of access to the profession of a judge for persons who completed the judge's training delivered by appellate courts (i.e. not by the National School of Judiciary and Public Prosecution). In view of the Defender, such a solution violates the principle of acquired rights protection, the principle of equality and prohibition of discrimination. As a result of the Defender's interventions, the Council of Ministers withdrew from the drafted regulations.

The Defender submitted a motion to the Constitutional Tribunal to declare unconstitutional some provisions regulating disciplinary proceedings for solicitors, legal advisers, notaries public and prosecutors. The existing regulations do not guarantee the members of the above professional groups, who were penalized in disciplinary proceedings, the right to pursue a claim before court that they did not commit a disciplinary misconduct or that the disciplinary proceedings against them were unfounded. They also do not grant the injured party the right to pursue a claim before court that the defendant committed a specific disciplinary misconduct or that the refusal to initiate or the decision to discontinue proceedings against the defendant was unfounded. In view of the Defender, such regulations substantially reduce the recourse to law in disciplinary cases concerning representatives of the said four professions, which violates the constitutional right to a trial. The date of the hearing has not been set yet.

The Defender is also concerned about disciplinary proceedings in cases concerning hunting. The current legal system does not grant the defendant the right to appeal to a common court, if the hunting tribunal imposes a disciplinary

reprimand on the defendant or suspends the defendant in the rights of a member of the hunting association. In view of the Defender, this regulation may violate the constitutional right to a trial. Therefore, the Defender presented the problem to the Minister of Justice. The Defender received the reply that her remarks will be analysed by the Ministry and, if the necessity to amend statutory regulations in this regard is confirmed, the remarks will be taken into account upon amending the Hunting Law.

In a petition to the Constitutional Tribunal, the Defender challenged the legal obligation to belong to several self-governing bodies (solicitors, legal advisers, notaries public, patent agents, auditors, nurses, midwives, doctors, veterinarians, pharmacists, laboratory analysts, psychologists, tax advisors, architects, construction engineers, urban planners, probation officers). Furthermore, the Defender made claims concerning unconstitutionality of the disciplinary penalty specified in acts regulating practicing certain professions which consists in depravation of the right to practice a profession for life. At the hearing before the Tribunal, the Defender partly withdrew her petition by dropping the claims concerning the unconstitutionality of the said regulations providing for mandatory membership in self-governing bodies. At the same time, the Defender sustained the petition in the remaining scope regarding the provisions about lifelong effect of disciplinary penalty consisting in deprivation of the right to practice a profession. As a result, the Tribunal rules in its verdict that some provisions in the acts on professional self-governing bodies, which provide for lifelong removal from the self-governing body for disciplinary reasons and without the right to apply for re-entry to the list, are incompliant with the Constitution. This concerned the self-governing bodies of legal advisers, solicitors, patent agents, nurses, veterinarians, and in the scope in which the provisions omitted the rules governing the cancelling of the entry about the disciplinary penalty consisting in the removal from the list of the members of the chamber of architects, construction engineers and urban planners.

2.MAJOR ISSUES CONCERNING PENAL LAW

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

The Defender is interested in mediation as an element of restorative justice serving the purpose of accelerating the proceedings. In the Defender's view, taking into account the best interests of crime victims and acceleration of criminal proceedings, mediation is necessary at the initial phase of penal proceedings (before the order on laying charges) and in the cases involving petty offences. In petitions addressed to the Minister of Justice, the Defender called for, among others, initiating legislative work on the draft Act on the profession of mediator in order to introduce changes analogous to the ones introduced in the Act on the profession of probation officer - including the requirements to be met by mediators. The Minister considered it necessary to amend the regulations in force and introduce regulations in a separate normative act to create broader mediation mechanisms. The problem is monitored by the Defender.

B. Lack or limited recourse to law

The cases investigated by the Defender and concerning the right of the injured party to receive the status of an auxiliary prosecutor revealed the problem of compliance of the Code of Criminal Procedure with the Constitution in the scope in which it does not provide for reinstating the time limit for lodging subsidiary charges (if the prosecutor decides not to initiate or to discontinue the proceedings, the injured party may file indictment to the court within a month from receiving such a decision). In the motion filed to the Constitutional Tribunal, the Defender argues that the lack of possibility to reinstate the time limit in the situation referred to in the challenged provision, if the error was not the injured party's fault, breaches the constitutional principle of the right of access to court. As a result, the challenged provision, in the scope in which it does not provide for reinstatement of a time limit for filing subsidiary charges, also undermines citizens' trust in the state and its legislation.

In her address to the Minister of Justice, the Defender pointed to a problem of actual exercise of the right to lodge a complaint to the court against the reasons for a decision issued at the trial (not distributed to parties). In the Defender's opinion, the Code of Criminal Procedure's regulations concerning the lack of possibility to lodge a complaint against oral statement of reasons for the decision made at the trial are incompliant with a constitutional principle stating that each party has a right to appeal against rulings and decisions issued by the court of first instance. The Defender emphasized that in accordance with the binding jurisprudence, a statement of reasons

is an integral part of a decision, unlike reasons for the judgment, whereas binding regulations in this area make it virtually impossible to exercise the right to lodge a complaint against the statement of reasons by the injured party. The case has not been closed yet.

The Defender joined the proceedings concerning the constitutional complaint regarding an appeal against the ruling refusing to reinstate criminal proceedings. The Defender stated that if the legislator decided on a solution according to which a substantial ruling of the district court dismissing the request for reinstatement of proceedings is subject to judiciary control, then the constitutional principle of equal treatment of entities in an identical legal situation requires to open an analogous control channel in the case of dismissing an identical request by the appellate court. The date of hearing has not been set yet.

C. Excessive length of proceedings

In 2010, the Defender also focused on the problem of suspending preparatory proceedings due to delays in obtaining expert opinions. This problem was raised by the Defender in an intervention addressed to the Public Prosecutor General. The Defender pointed out that guidelines issued by the National Public Prosecutor in 2005 were not observed. In reply, the Public Prosecutor General assured that the abovementioned guidelines were still valid, which meant that waiting for an ordered and pending procedural act did not make it impossible to carry on with the proceedings. In the address to the Minister of Justice, the Defender also pointed to the need to intensify legislative work on draft Act on expert witnesses, the provisions of which would allow to improve cooperation between courts, prosecutors and experts and thus, would contribute to enhanced quality and efficiency of opinion-issuing process. In a reply to the Defender, the Minister agreed with the Defender's position and stated that it is the prosecutor's obligation to undertake actions to quickly obtain an opinion, also, if possible, by referring to another expert, who can issue an opinion immediately.

A consequence of fulfilling the obligations resulting, *inter alia*, from the rulings of the European Court of Human Rights issued in cases against Poland concerning excessive length of proceedings was the adoption (in 2004) of the Act on complaints concerning a breach of the right to a trial within a reasonable time (in the current legal situation, also in preparatory proceedings conducted or supervised by a prosecutor) without an unjustified delay. The Defender participated in the proceedings concerning a constitutional complaint, claiming that provisions of the said Act in the scope in which they provide for optional adjudgement of damages for excessive length of proceedings and fail to specify the reasons the court should take into account while

ruling on adjudging or refusing to adjudge relevant damages for the complainant, are incompatible with the Constitution. The date of trial has not been set yet.

D. Right to defence

The cases submitted to the Defender revealed a significant problem regarding the right to defence, namely the restriction of the suspect's freedom to communicate with a defence counsel due to the fact that the legislator granted the prosecutor the right (for 14 days from the day of the beginning of pre-trial detention) to be present at visits and to control correspondence with a defence counsel as a result of the procedural criterion of a "particularly justified case". The Defender addressed the Minister of Justice on the issue, indicating her doubts concern not only the fact of temporary restriction of the freedom of contacts between the defence counsel and the suspect, but the criterion for such restriction adopted by the legislator. The restriction can be introduced in a "particularly justified case". In the Defender's view, the abovementioned regulations, due to their lack of specificity, are incompatible with the Constitution; therefore the Defender requested the Minister to take actions to amend the said legal situation. The issue is monitored by the Defender.

The confidentiality of contacts between a suspect (accused) and his/her defence counsel during the exercise of operational control is the subject of proceedings regarding a constitutional complaint in which the Defender participates. The Defender emphasized that control of conversations and contacts between the suspect and his/her defence counsel, apart from exceptions specified in the Code of Penal Procedure, is unacceptable and illegal in terms of constitutional and legislative standards. In the Defender's opinion, the provisions of the Act on the Police, in the scope in which they do not specify the limits for the entity performing operational and examination activities to enter the contacts sphere or procedural guarantees of this entry and methods of dealing with obtained information concerning these contacts, breach the constitutional standards of the right to defence, the right to collect information about citizens by authorities only to an extent necessary in a democratic rule of law and the citizen's right to delete information collected in a way incompatible with the law. Moreover, the abovementioned regulations in their current wording are a circumvention of inadmissibility in evidence provided for in the penal procedure. The consent given by the legislator to authorities to interfere in confidential contacts between a suspect and his/her defence counsel may adversely affect the functioning of justice administration and the right to an honest and fair trial. The case is to be examined by the Constitutional Tribunal.

E. Penalty notice proceedings

Citizens' motions questioning faulty regulations in penalty notice proceedings prompted the Defender to lodge two interventions. In the first one, addressed to the Minister of Justice, the Defender raised the issue of insufficient premises to dismiss a legally valid penalty notice, which results in the situation where penalty notices with gross faults remain in legal transactions. In a reply to the Defender, the Minister announced that the problem would be analysed by the Criminal Law Codification Committee at the Minister of Justice to consider a relevant amendment of the Petty Offences Procedure Code. In the second intervention addressed to the Minister of the Interior and Administration concerning penalty notice proceedings in respect of drivers whose offences are registered by image recording measuring and control devices, the Defender pointed to an illusory possibility to submit explanations in a written form, due to the fact that the time limit is too short since it is calculated from the date of issuance instead of delivery, which would allow to impose penalties in absentia and to pay the fine without costly and time-consuming judicial proceedings. In reply, the Minister informed that the draft ordinance amending the abovementioned issue had been submitted to the legislative work agenda of the Prime Minister in 2011.

F. Personal freedom

The necessity to regulate the use of coercive measures by authorized officers in one normative regulation having the status of an act was the subject of the Defender's petition to the Prime Minister. The petition was prompted by the decision of the Constitutional Tribunal issued in the case lodged by the Defender and concerning the incompatibility of the provision of the Ordinance of the Council of Ministers on coercive measures used by the Central Anticorruption Bureau officers with the provision of the Act on the Central Anticorruption Bureau and constitutional norms. In response, the Minister of the Interior and Administration stated that the work on the abovementioned project would be conducted in 2011.

The issue of using coercive measures to perform external body examination of the accused (suspect) and other examinations not involving the violation of bodily integrity based on regulations in the Ordinance was raised in the Defender's letter to the Minister of Justice. The Ordinance was issued on the basis of authorization included in the Code of Penal Procedure, whereas none of its provisions regulate the issue of using coercive measures towards the accused (suspect), if he/she refuses to fulfil the said obligation. In view of the Defender, the said provision of the Ordinance was issued contrary to the statutory authorisation and was incompatible with the Constitution, since, among others, deprivation or limitation of liberty of a human being

or citizen can take place only following the rules and procedure specified in the act. In reply, the Minister stated that issues raised by the Defender had been analysed by the Criminal Law Codification Committee, which was preparing extensive amendments to the Code of Penal Procedure, aimed at introducing solutions streamlining the course of penal proceedings.

G. Pre-trial detention

Issues related to the application of pre-trial detention are the constant subject of the Defender's interest. The Defender submitted two legal inquiries on the issue to the Supreme Court. In both cases the Supreme Court agreed with the Defender's conclusions, ruling in the first case that the dismissal of a decision to prolong pre-trial detention by the court of appeals results in the obligation to immediately release the accused person, if the time limit of the measure or its prolongation has expired. Also in the second case did the Supreme Court agree with the Defender, concluding that the court, when deciding during preparatory proceedings on applying or prolonging pre-trial detention, is obliged to evaluate aptness of the legal classification of a deed the suspect is accused of that was made by a public prosecutor.

H. Citizens' safety

Doubts arising in case-law of the courts with regard to the European Arrest Warrant were reported in the Defender's petition to the Minister of Justice. The Council Framework Decision on the European arrest warrant and the surrender procedures between Member States, constituting the basis for implementing this institution to the Code of Penal Procedure, does not include an obligation to bind the state in which a convict serves the sentence with a length of the sentence passed abroad. The opinion of the Supreme Court and case-law of common courts show that the possibility to introduce a sentence transformation procedure in accordance with the Polish law is excluded with regard to a Polish citizen transferred to another Member State on the basis of the European Arrest Warrant and then sent back to Poland to serve the sentence there. In his reply, the Minister of Justice agreed with the Defender and announced the initiation of amendments to the penal procedure as regards the execution of EAW.

The Defender petitioned the Minister of Justice in relation to the need to fully implement decisions of the Council of Europe Convention of 23 November 2001 on cybercrime, as well as the Additional Protocol to the Convention, into the Polish legal order. The Minister informed the Defender that due to international obligations, it was

necessary to increase the age limit for minors participating in recording, downloading, storing or holding pornographic content, to at least 16. Therefore, legislative measures adjusting the Polish law to the requirements of the Convention on cybercrime had been undertaken.

Due to disturbing signals in the media concerning the aggressive behaviour of football supporters, which met the criteria of crime, during football matches, the Defender requested the Police Commander in Chief to provide information on the execution of the provisions of the Act on safety at mass events in practice. In reply, the Police Commander in Chief stated that the evaluation of statutory regulations would be possible only after the implementing regulations to this Act have entered into force. Therefore, the Defender petitioned the Minister of the Interior and Administration on this issue and received the list of five binding implementing regulations and the information that legislative work on two other draft regulations was under way.

In 2010, the Defender analysed the issue of the authorization of law enforcement agencies to use and make public the materials coming from monitoring and containing personal data of citizens. There is no normative basis for such actions interfering with constitutionally protected rights of citizens to privacy and image protection. Therefore, the Defender requested the Inspector General for the Protection of Personal Data to present the opinion on the need to draft an act that would comprehensively define the rules of using data from monitoring by state authorities. The Inspector General for the Protection of Personal Data agreed with the Defender, recognizing the need to initiate relevant legislative work. The issue is monitored by the Defender.

I. The protection of the rights of victims of crime

The Defender takes actions aimed at adopting the National Programme for Victims of Crime, the draft of which has been drawn up at the Office of the Human Rights Defender in consultation with the Minister of Justice. The Defender, guided by the need to provide comprehensive assistance to victims of crime, requested the Prime Minister to consider assigning of a status of a normative act in a form of law to the Programme and accelerating the work in this regard. The Minister of Justice replied that a relevant team was responsible for work in this area.

The Defender addressed the Minister of Justice with a request to undertake a legislative initiative that would efficiently ensure the children's right to freely express their views on matters concerning themselves and receive full protection against sexual abuse, suggesting that crime against sexual freedom committed against children should be prosecuted ex officio. The Minister's response was to present the draft amended Penal Code. The Defender believes that the analysis is needed of whether the injured minors should have the possibility to file a request for prosecuting other

criminal offences, if a perpetrator is a statutory representative or a guardian of the child, or for prosecuting ex officio all crimes committed against minors.

Having received signals from the crime victims and non-governmental organizations, the Defender requested the Minister of Justice to consider a legislative initiative aimed at imposing an obligation on authorities conducting preparatory proceedings to instruct the injured party about their rights, providing them with full and comprehensible information. The Defender's petition also contains a motion to change the content of instructions currently provided to the injured party, so that they were comprehensive and clear to an average person. The problem is monitored by the Defender.

In 2010, the Defender also focused on actions undertaken by Poland in order to implement the Council Framework Decision on combating the sexual exploitation of children and child pornography, which requires the Member States to take the necessary measures to ensure that a natural person, who has been convicted of one of the offences related to sexual exploitation of children, may, if appropriate, be temporarily or permanently prevented from exercising professional activities related to the supervision of children. The Defender requested the Chairman of the Justice and Human Rights Committee of the Sejm of the Republic of Poland to provide information about planned legislative work on the parliamentary project containing regulations preventing persons convicted of crime against family and care, violent crimes and crimes specified in the Act on combating drug addiction from working directly with children.

In the best interest of children who are victims and witnesses to a crime, the Defender repeatedly petitioned the Minister of Justice on the need to amend penal procedure to provide for a single interrogation of a minor witness (victim). Moreover, noticing significant discrepancies in case-law of the Supreme Court concerning the question, whether a common court should automatically ordain another interrogation of a child at the request of a suspect (accused) or their attorney, the Defender presented the problem to be resolved by the Supreme Court. The Defender argued that the full exercise of a principle of adversary trial system, ensured by re-interrogation of a child, may cause a secondary victimization of the child. The Supreme Court refused to pass a resolution in this regard, stating that the legislator had specified the rules and limits of witness (victim) protection against secondary victimization, if the witness is under 15 at the moment of interrogation, taking into account the obligation to reach the truth and the need to provide the right to defence to the accused, who has been granted possibility to demand re-interrogation – without additional conditions – if the accused had not had a defence counsel at the moment of the first interrogation of the victim.

J. Protection of rights and liberties of prisoners

Issues raised by the Defender in general interventions concerning the protection of the rights and freedoms of persons deprived of their liberty include: CCTV monitoring of prisons, use of coercive measures, the way the convicts surrender to drug tests, inappropriate living standards in prisons, pre-trial detention centres and emergency youth centres, ban on phone conversations by those detained on remand, exercise of the right to communicate with a defence counsel or an attorney, difficulties with informing foreigners about their rights in prison, protection of the right to contact children by parents deprived of liberty and the functioning of the electronic supervision system. As regards preventing juvenile demoralization and crime, the Defender's interventions concerned irregularities in bringing, transferring and stay of minors in youth care and sociotherapy centres, as well as juvenile shelters and juvenile detention centres. The cases investigated by the Defender revealed the problem of constitutionality of legal regulations concerning the conditions for providing health services to convicts serving the sentence of deprivation of liberty in the presence of an officer not performing a medical profession, also if there is no risk to safety of the person providing medical services. The Defender requested the Constitutional Tribunal to declare the provision of the Executive Penal Code allowing for such a practice to be incompatible with the constitutional right to privacy. The regulation in force does not guarantee the provision of medical services to patients with due respect to their dignity and intimacy. The date of trial has not been set yet.

Persons deprived of liberty also lodged complaints to the Defender concerning strip searches conducted by prison service officers in rooms not adapted to this purpose, which did not ensure intimacy and proper hygienic conditions. The Defender's findings prove the lack of acquaintance with the relevant procedures on the part of prison service officers. In response to the Defender's intervention, the Director General of the Prison Service did not agree with these accusations. However, the Defender was assured by the Minister of Justice that a letter reminding about the necessity to properly equip the rooms were strip searches are performed would be issued.

K. Overcrowded prisons and pre-trial detention centres

Pursuant to a judgment by the Constitutional Tribunal, declaring unconstitutional the provision of the Executive Penal Code allowing for overcrowding of prisons and pre-trial detention centres, new legal solutions entered into force with respect to the procedures followed by the competent authorities when the number of prisoners in prisons or pre-trial detention centres exceeds the total capacity of these institutions

in the national scale. Introduced procedures are to prevent the overcrowding of penitentiary establishments. However, the Defender believes that adequate funds are needed to improve the situation in the penitentiary sector. Persistence of the current jurisprudence of penal courts and refraining from the creation of an adequate number of new places for prisoners may result in mass respites of penalties not exceeding two years of imprisonment. The Defender received reports that in order to implement the regulations determining the maximum period for the prisoner to stay in an overcrowded cell, prisoners were transferred between penitentiary establishments. Such procedure makes it difficult for prisoners to maintain contacts with relatives and to exercise other rights or perform duties. The Defender requested the Minister of Justice to take a stance on this issue. In response, the Defender was informed that checks carried out at the Central Management Board of the Prison Service by the Supreme Audit Office had revealed that as a result of the implementation of the "Programme for obtaining 17 000 places in prison service organisational units in the years 2006-2009" and allocation of funds, the conditions of serving the sentence by prisoners had improved in terms of the living area and appropriate staffing. Moreover, the Central Management Board of the Prison Service submitted proposals for actions to the Ministry of Justice, and the Ministry drew up the draft amendment to the Act on serving the deprivation of liberty sentence outside prison in an electronic supervision system, by expanding the catalogue of convicts who could serve their sentence under this system.

3. MAJOR ISSUES CONCERNING LABOUR LAW, SOCIAL SECURITY AND UNIFORMED SERVICES

A. Protection of workers

Regulations concerning overtime work of foreign service employees raised concerns of the Defender. The Defender requested the Minister of Foreign Affairs to consider a change of the current solution provided for in the Act on foreign service. In accordance with the solution in force, if so required by foreign service needs, a member of foreign service shall work overtime, also on Sundays and holidays in exceptional cases, without the right to separate remuneration and the right to free time in return for the hours worked. In response, the Defender was informed that the restrictive provision of the Act on foreign service did not lead to the infringement of employees' rights in terms of working time, since the Ministry of Foreign Affairs had previously introduced guidelines on the methods of applying obligatory working time regulations and proper working time recording for foreign service members, with particular regard to units located abroad. However, regardless of the above, the Defender's opinion on the need to amend the abovementioned regulation has been agreed with.

B. Employee leaves

One of the cases revealed difficulties in obtaining paternity leave by a father adopting a child. Pursuant to the provisions of the Labour Code, a parent may go on a paternity leave only once in the first year, which results in the adopting parent being practically unable to go on such leave. Therefore, the Defender requested the Minister of Labour and Social Policy to consider taking actions aimed at the strengthening of adopting fathers' entitlements to paternity leaves. In reply, the Minister informed the Defender that the possibility to undertake a relevant legislative initiative in this regard was considered. Amendments called for by the Defender were introduced to the Labour Code and entered into force on 1 January 2011.

C. Termination of an employment contract. Expiry of the employment relationship

In 2010, the Defender focused on the issue of dismissing assistant public prosecutors. The amendment to the Act on Public Prosecutor's Office introduced competitions for the position of a prosecutor. In order to take part in a competition, a candidate needs to stop working at the prosecutor's office. Therefore, the Defender

asked the Public Prosecutor General to explain this issue. In reply, the Defender was informed that in order to avoid the need to dismiss assistant public prosecutors, whose three-year period of performing entrusted prosecutor's activities expired, it was decided that the decision on transforming the assistant public prosecutor position into a public prosecutor position may be made a couple of months before the expiry of vote granted to an incumbent assistant public prosecutor. At the same time, the Defender was informed that the abovementioned view had been transferred to all appellate public prosecutors' offices with a request to submit applications to transform assistant public prosecutor positions into prosecutor positions with a due notice.

D. Employing foreigners

The Defender also intervened in the cases of difficulties in employing foreigners in the civil service. The Defender's concerns were raised by press information on the refusal of admission of foreign citizens to the National School of Public Administration. Therefore, the Defender submitted a request to the Head of the Civil Service to present the position on the abovementioned case. In reply, the Defender was informed that the Act on Civil Service stipulates that a foreign citizen can be employed in the civil service after meeting the requirements specified by law. Moreover, the Head of the Civil Service informed the Defender that the information received from the National School of Public Administration proves that there had been no cases of denying foreign citizens the possibility to study at the abovementioned school.

E. Licence to practice a profession

In 2010, the Defender received motions concerning the prohibition of undertaking paid activities by employees of the National Labour Inspectorate. Doubts and reservations of complainants pertained to the fact that the prohibition to undertake paid activities concerns not only employees performing and supervising control activities, but also each and every employee of the National Labour Inspectorate. Bearing in mind the abovementioned reservations and press information on the assumptions to the draft amendment to the Act on the National Labour Inspectorate prepared at the Chief Labour Inspectorate, the Defender requested the Chief Labour Inspector to consider the possibility of including relevant amendments in the scope suggested by applicants. In reply, the Defender was informed that the work on the Act amending the Act on the National Labour Inspectorate was under way in the Sejm. The amendment concerns only the transformation of the National Labour Inspectorate Training Centre into an organizational unit of the National Labour Inspectorate. At

the same time, the Defender was informed that if the Sejm starts work on another amendment to the Act on the National Labour Inspectorate, the problem reported by the Defender would most likely be a subject of discussion. The problem is monitored by the Defender.

The Defender also received complaints concerning the possibility to obtain licences to practice the profession of a social worker by persons who have recently finished studies preparing to the profession of a social worker. Therefore, the Defender requested the Minister of Labour and Social Policy to comment on the issue. In reply, the Minister assured that, taking account of irregularities on the part of higher education institutions and not on the part of students which concern the completion of studies additionally preparing to the profession of the social worker, the Ministry's interpretation was that persons holding a social worker diploma had obtained the relevant licences. Such persons, if only they had started a social worker specialisation before 1 October 2008, are entitled to have their licence to practice a profession recognized and to receive a certificate confirming this licence to be recognized abroad.

F. Right to old age or disability pension

The Constitutional Tribunal examined the Defender's motion concerning the common retirement age for women and men. The Constitutional Tribunal ruled that the difference in the common retirement age for women and men was compatible with the Constitution. In the opinion of the Tribunal, the Defender's claims did not concern the difference in common retirement age itself, resulting from the contested provision of the Retirement Act, but the consequences of this difference resulting from other provisions of this Act and other acts. As regards the key claim of the Defender that different retirement age for women and men leads in the women's retirement pay being lower than average, the Constitutional Tribunal found that the assessment of the challenged regulation's constitutionality cannot rely only on this single factor. Assessing the contested regulation of the Retirement Act, the Constitutional Tribunal found that different common retirement age for women and for men did not discriminate against women, as it constituted a compensating privilege justified in the light of constitutional norms and previous case-law. At the same time, the Constitutional Tribunal pointed out that although regulations on different retirement age for women and men were compliant with the Constitution, they could not be recognized as an optimal solution. The Constitutional Tribunal decided to refer a notice to the Sejm on advisability of initiating legislative actions aimed at gradually making retirement age for women and men equal.

Being aware of the fact that persons working in special conditions or performing work of a special character cannot acquire the right to bridging retirement, despite

paying contributions to the Bridging Retirement Fund, due to the fact that they do not perform such work full time, the Defender lodged a relevant petition to the Minister of Labour and Social Policy. In reply, the Minister confirmed that in accordance with the legislator's intentions, the obligation to pay BRF contributions had been regulated independently of the conditions for acquiring the right to bridging retirement. A different regulation could lead to employers evading the payment of BRF contributions by employing part-time workers.

In 2010, the Defender focused on the rules of calculating pensions due to incapacity for work, if the incapacity for work of the insured person occurred under the age of 30 and such person has not paid contributions for full ten years, which is required to calculate a pension assessment basis, only due to the fact that the person had been studying in a higher education institution. In consequence, the amount of this person's disability pension and the amount of family pension after this person's death is reduced, since "zeroes" are added to the lacking 10 years. The Defender suggested that in such case there should be a determine the contribution assessment basis from the actual period of being subject to insurance obligation (contribution payment), i.e. without "zeroes", as it is the case with persons without the accumulated ten years of contribution payment due to alternative military service, active military service or child care leave. However, the Minister of Labour and Social Policy did not agree with the Defender's arguments, justifying that the fulfilment of the suggestion would mean an extension of possibility to calculate differently the pension assessment basis, which would not be appropriate due to the planned change in calculating the amount of pensions covered by the reformed pension system.

The Defender also focused on the lack of entitlement to disability pension due to incapacity for work of persons not meeting the obligation of being insured (paying contributions) for five years within the last ten years before submitting an application for a disability pension or before the date on which incapacity for work occurred. This issue is of particular significance, since the case-law of the Supreme Court indicates that this requirement should not apply to persons who are completely incapable for work and have an accumulated insurance and no insurance period of at least 20 years of work in the case of women and 25 years of work in the case of men. The Defender petitioned the Minister of Labour and Social Policy in this regard, who in reply informed the Defender that the suggested change had been taken into account in the draft Act amending the Act on old age and disability pensions from the Social Insurance Fund.

The Defender also analysed enforceability of the European Court of Human Rights judgments on the example of the case concerning early retirement for employees taking care of children requiring constant care (Moskal v. Poland).The Defender focused particularly on the problem of the possibility to challenge the pension authority's decisions. In the Defender's view, the judgment of the Court cannot remain without influence on the possibility to challenge the decisions on pensions on the basis of existing regulations of the Act on old age and disability pensions from the

Social Insurance Fund. Therefore, the Defender requested the Minister of Labour and Social Policy to take a stance on the issue. The information obtained by the Defender suggests that provisions of the Act on old age and disability pensions from the Social Insurance Fund allow to challenge legally valid decisions in cases concerning pension benefits in strictly defined instances, while the occurrence of such a case obliges pension authority to institute proceedings to re-establish the right to benefits. The Ministry confirmed that the lack of the possibility to challenge ex officio decisions would lead to extreme situations, where the insured would be paid underestimated benefits (e.g. due to errors made by pension authority) or would be provided benefits without being entitled to them (e.g. as a result of corruption).

G. Benefits for service-disabled veterans, war veterans and victims of oppression

The issue of providing benefits to service-disabled veterans, war veterans and victims of oppression was also a part of the social security area. Complaints in this regard were lodged to the Defender and concerned the decisions of the Office for War Veterans and Victims of Oppression refusing to grant the right to receive monetary benefits pursuant to the provisions of the Act on monetary benefits for persons deported for forced labour and placed in labour camps by the Third Reich and the Union of Soviet Socialist Republics. In the judgment of 16 December 2009 upon the Defender's motion, the Constitutional Tribunal ruled that provisions of the said Act, in the scope in which they omit the reason for deportation for forced labour within the pre-war territory of Poland, are incompatible with the Constitution. The Tribunal also stated that the legislator should, as soon as possible, due to age and status of the victims of such repressions, redefine the deportation for forced labour. To this end, the Defender requested the Minister of Labour and Social Policy to take actions aimed at accelerating legislative work in this regard. In reply, the Minister informed the Defender that the draft Act amending the Act on monetary benefits for persons deported for forced labour and placed in labour camps by the Third Reich and the Union of Soviet Socialist Republics had been adopted by the Council of Ministers and referred to the Sejm.

H. Social assistance

In 2010, the Defender raised the issue of aid to flood victims in the form of granting designated benefits from the social assistance system to all victims of the disaster, regardless of whether they met the income criterion, and requested the Minister of Labour and Social Policy to take urgent actions aimed at eliminating

divergences in applying the rules of granting assistance to victims of flood by the social assistance services. The Defender was informed that designated benefit may be granted regardless of income and does not have to be returnable, whereas the term "may" does not mean the obligation to grant assistance regardless of income. Gminas that grant assistance depending on the income of a particular person or family act illegally.

I. Family rights protection

Due to complaints submitted to the Defender and concerning the lack of the right to attendance allowance in a situation when a person requiring attendance is married and a signalling decision of the Constitutional Tribunal in this case, concerning the necessity to take legislative action in this regard, the Defender addressed interventions to the Minister of Labour and Social Policy and the Chairperson of the Social Policy and Family Committee of the Polish Sejm. In reply, the Minister of Labour and Social Policy informed the Defender that due to the state of public finance, the extension of the group of persons entitled to apply for attendance allowance was not planned and no work aimed at removing the abovementioned constraint was carried out. However, the work on the execution of the signalling decision of the Constitutional Tribunal has been undertaken by the Senate of the Republic of Poland. An adopted draft Act includes a proposal to amend the Act by completely eliminating a prerequisite which resulting in the lack of possibility to obtain this allowance.

The Constitutional Tribunal examined the Defender's motion concerning alimony from the Alimony Fund for adults who continue their education and have children. The Tribunal ruled that depriving adults who continue their education of the right to alimony from the Alimony Fund because they have children is a breach of the principle of equality before the law. In principle, a child under the age of 18 is entitled to alimony. By way of exception, the legislator granted the right to alimony also to adults if they continue their education at school or at higher education institution, however, no longer than until the age of 25, as well as to profoundly mentally retarded persons - for an indefinite period. The Alimony Act also defines the conditions, the occurrence of which constitutes an irremovable obstacle to receiving the allowance. One of such situations occurs if the entitled adult person has a child. Having a child is a criterion that differentiates the situation of persons entitled to alimony. According to the Tribunal, this criterion does not serve the purpose consisting in the state aid for adult persons in obtaining education in a situation where they expect in vain such help from their parents. The Tribunal concluded that the regulation of the Alimony Act in this area is unconstitutional.

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

Introduction of new legal regulations and budgetary limitations have resulted in a change of issues raised in complaints and motions submitted to the Defender both by soldiers and public service officers. The problems most often mentioned in complaints lodged to representatives of the Defender during their on-site visits to military units and the ones lodged directly to the Defender concerned low efficiency of equipment, mainly due to the lack of spare parts. Problems related to dissolving and transferring military units to other garrisons have also been raised (the procedures have been contested most). As in previous years, numerous critical remarks concerned the Military Health Care and access to medical treatment. Pilots' complaints about gradual reductions in flight plans, up to as much as 60% of initial number of hours a year, have also been recorded. This constitutes a significant threat to flight safety. Contract soldiers expressed their bitterness at the limitation in the duration of service to 12 years. Attention was also drawn to significant difficulties in promotion from professional privates corps to professional non-commissioned officer corps. Police officers (driving police vehicles) submitted motions to the Defender concerning cases where they were forced to cover potential damages related to driving, since their employer failed to pay accident and theft insurance. Another problem reported by police officers was the practice of designating official duties. The relevant regulations in force allow to perform official duties for no longer than 12 months. The existing practice consists in officers returning to their previous position for several days after the expiry of this time limit and them being entrusted with official duties again. Customs service officers raised the problem of mass layoffs based on regulations allowing to dismiss an officer after a twelve-month period of suspension in performing official duties, if the reasons for suspension have not ceased to exist. Fire fighters of the State Fire Service raised the problem unsolved for many years, i.e. excessive duty time and the lack of possibility to obtain an equivalent for that time in the form of free time or additional remuneration.

K. Military pensions

In 2010, one of the Defender's concerns was the issue of military pensions. The Constitutional Tribunal examined the Defender's motion concerning the rules of increasing military pensions. The Constitutional Tribunal ruled that the provisions of the Act on pension benefits for professional soldiers and their families are unconstitutional in the scope in which they do not contain guidelines concerning the content of the Ordinance. The Tribunal emphasized that the abovementioned Act

fails to provide guidelines for solutions to be adopted by the Council of Ministers which would regulate in detail the conditions of increasing military pensions. The form of statutory authorization resulted in a situation where the authority issuing the Ordinance could arbitrarily regulate the conditions for increasing military pensions. This was due to the fact that the authority was not bound by the guidelines. The lack of guidelines on the methods of regulating the issue of increasing military pension in the ordinance has lead to the divergence between the contents of the Ordinance and the Act. Repealing the provision granting authorisation to issue an Ordinance leads to the situation, where implementing regulation issued on the basis of this provision is no longer valid. New, more favourable rules of calculating the pension assessment basis pertain to some soldiers previously subject to more restrictive Ordinance provisions. However, an actual possibility to increase the amount of pension benefits (without repealing final decisions of the military authority) depends on relevant procedures. Until now, these procedures had been specified in the Ordinance. Neither the provisions of the Act on pension benefits for professional soldiers, nor other legal regulations provide for the mechanism of increasing military pensions, since the Ordinance was repealed due to the ruled unconstitutionality of the authorising provision.

4. MAJOR ISSUES CONCERNING CIVIL LAW AND PROPERTY MANAGEMENT

A. The protection of property rights

The Defender received complaints concerning a special type of administrative proceedings based on the provisions of the so called 'Special Purpose Road Act' laying down special principles for the preparation and implementation of investment in public roads. Some of the complaints focused on the valuation of property expropriated in such proceedings. The Defender lodged a motion to the Constitutional Court to declare unconstitutional the provision of said Act excluding, to a considerable extent, a possibility to declare invalidity of or to repeal a decision authorising the implementation of a road investment that results in compulsory purchase of real property concerned. According to the challenged provision of the Special Purpose Road Act, it is impossible to declare invalidity of such a decision if the application is filed after the lapse of 14 days from the day on which the decision becomes final and the investor starts the construction of the road. In consequence, it in fact leads to a waiver of a party's right to delete from legal affairs an administrative decision characterised by the most serious category of substantive or procedural defects. Such a solution cannot be approved because due to the significant consequences of a decision on property release for the implementation of a road investment in the area of citizens' property rights, any proceeding in this regard should comply with the right to a fair hearing standard guaranteed by international conventions and the Constitution. In fact, the legislator arbitrarily assumed that the mechanism of a democratic state under the rule of law in a field such as road construction is so inefficient that it is necessary to introduce a regulation restricting the right to a fair hearing – with no regard to the circumstance that bans limiting the constitutional right to a fair hearing in this case are not necessary to reach the intended goal. In the same letter to the Constitutional Court the Defender triggered the constitutionality check of all provisions laying down the rules for determining market value of property expropriated for public roads. According to the Constitution, compulsory purchase is only permissible with fair compensation for the expropriated goods that is equivalent to their value. Provisions challenged by the Defender make it possible to grant compensation for expropriated property that is not compliant with the constitutional principle of fair compensation.

In 2010, the Defender lodged several motions concerning the protection of citizens' property rights. Among others, the Defender requested the Minister of Justice to introduce a legal regulation that would specially provide for limiting the period for compensation claims concerning faulty decisions of administration bodies, linking it to the day on which the ruling acknowledging the illegality of an action of the public authorities becomes valid (or final). In response, the Minister of Justice agreed with the Defender as to the necessity to take legislative steps in this respect, and presented

proposals of solutions aimed at regulating issues related to the time limitation concerning claims for compensation of damage caused by an illegal administrative decision prepared by the Civil Law Codification Commission. Numerous doubts connected with the application of the provisions currently in force, governing time limitation for such claims are expected to be resolved by the resolution of the Civil Chamber of the Supreme Court en banc. The Defender keeps monitoring the case.

In 2010, the Defender filed a motion to the Constitutional Court, asking it to examine whether the lack of possibility to challenge before court the decisions of the so called 'regulatory commissions', operating under the provisions of the Act on the Relations between the State and the Catholic Church in the Republic of Poland and the Act on the Relations between the State and Jewish Confessional Communities in the Republic of Poland was constitutional. In the same motion the Defender questioned whether it was constitutional to deprive local government units of the status of party to the proceedings before the Property Commission. The motion is awaiting examination by the Constitutional Court.

B. Property Management

After a few years of correspondence between the Defender and the Minister of Infrastructure, in 2010 the Council of Minsters submitted a draft amendment of the Property Management Act. New provisions make it possible to regulate the legal status of private property seized for public purposes without a final expropriation decision (the so called 'de facto compulsory purchase'). In the previous legal situation, any attempts to regulate property issues would face serious difficulties, in many cases such regulation was almost impossible. In consequence, owners saw their rights considerably restricted, and were also unable to obtain any compensation, which, according to the Defender, violated the guarantee of legal compulsory purchase rooted in the Polish Constitution. The current administrative procedure governing property issues and due compensation is favourable to the owners. Thus, the case closed with full consideration given to the requests of the Defender.

In his motion filed to the Minister of Infrastructure, the Defender drew attention to numerous complaints of perpetual usufructuaries whose annual fees for perpetual usufruct drastically increased as a result of property market value adjustment. In the opinion of the Defender, it is necessary to take up legislative works to restrict the possibility of a single considerable increase of these fees and possibly spread over time the adjustment of fees to the growing market value of property. The Minister made any potential action in this respect conditional on the results of inspection of the way in which competent bodies, representing the State Treasury and local government bodies, exercised their rights in terms of adjusting fees for perpetual usufruct of

property in recent years. The Defender will continue to monitor this case because the problem of very high fee rises is the subject of numerous complaints to the Defender.

The Constitutional Court acknowledged the Defender's motion, and declared unconstitutional the provisions authorising the Agricultural Property Agency to exercise the so called 'right of redemption' of agricultural property within 5 years of its acquisition. The Agency would exercise this right using criteria known only to itself and not disclosed to the public, and property would be redeemed at prices much lower than market prices. The case was of extreme importance to virtually all buyers of agricultural property who potentially risked immediate transfer of their property to the Agency. In numerous complaints to the Defender it was raised that the Agricultural Property Agency abused its right for speculative purposes and that immediate seizure of an agricultural holding ruins its owner who is forced to return loans and payments received under EU programmes.

C. Reprivatisation

In 2010 the Defender addressed the problem that government administration bodies would make the decision acknowledging the right to compensation for property left beyond the present borders of the Republic of Poland (the so-called 'property beyond the Bug River") dependant on the applicant giving their personal identification number (PESEL). Such activity, in the opinion of the Defender, has no basis in the applicable provisions. It is also of importance that not all applicants have Polish documents with the PESEL number. The Defender addressed the Minister of Treasury on the issue. In response, the Minister agreed with the Defender that the requirement of administration bodies acknowledging the right to compensation that the applicant should submit the PESEL number had no legal basis. Therefore, the Minister pledged to take action to eliminate the practice challenged by the Defender.

D. Resumption of civil proceedings

Another issue with high practical relevance was the resolution of the Supreme Court adopted at the request of the Defender with regard to discrepancies in the legal practice concerning the procedural meaning of the judgement of the European Court of Human Rights stating that the right to fair hearing was violated in national proceedings. The Defender agreed in this respect with a view that is common in the legal practice that the judgement of the European Court of Human Rights declaring a violation of the right to a fair hearing before court cannot constitute a basis for re-opening proceedings due to invalidity. What speaks in favour of such a position, in

the opinion of the Defender, is the need to protect the rights of third parties that did not participate in the proceedings before the European Court as well as the need to protect the constitutional principle of equality before the law. The Supreme Court shared the view of the Defender declaring that a violation of the right to a fair hearing before court was not a basis for resuming civil proceedings.

E. Protection of tenants' rights

In 2010 the Constitutional Court made a decision about the request of the Defender concerning the constitutionality of a provision of the Code of Civil Procedure which orders that every evicted person who is not awarded the right to public housing by a court judgement shall be awarded the so called temporary housing. The Defender was critical in his evaluation of consequences of applying this regulation in the last few years. The requirement to provide temporary housing to each evicted person led to severe delays in the execution of valid court judgements, also in cases in which family ill-treatment was the reason for eviction. The Constitutional Court declared the provision challenged by the Defender unconstitutional. Entry into force of the judgement was postponed by 12 months. In this period, the legislator is obligated to regulate again the issue of preventing sidewalk evictions so that the adopted regulation would not become a source of potential violations of civil rights and freedoms.

In 2010 the Defender conducted yet another comprehensive analysis of the degree in which the State fulfilled its constitutional obligation to support citizens in satisfying their housing needs. Unfortunately, it follows from the analysis that the situation has not improved significantly in this respect. The Defender drew attention to the above problem in a lengthy letter to the Prime Minister indicating that still not all people who face a difficult housing and financial situation can count on effective relief from the State. There are still too few flats, especially subsidised ones, in relation to the needs. There are still long lists of people waiting for subsidised housing. The Defender indicated that it was necessary to develop and implement a long-term government housing development scheme. The Defender also indicated specific regulations that require amendment or specification. A response to this request was provided by the Minister of Infrastructure, who informed the Defender that the Ministry prepared a paper laying down the rules for supporting housing in the next few years. In the paper some of the proposals of the Defender concerning amendments in the applicable law were taken into account. Unfortunately, objectives adopted by the Ministry were not reflected in the adoption of specific legal solutions.

F. Rights of members of housing cooperatives

Actions taken by the Defender in 2010 addressed the problem of amending the Housing Cooperatives Act. The Defender made several general requests referring to the already indicated practical questions concerning the application of the amended provisions (problem of adjustment and rules of returning housing contributions, unclear regulations facilitating the assemblies of members' representatives in housing cooperatives, inaccurate regulations concerning the claims of tenants of the so called 'former company flats' for transfer of ownership). With reference to the position of the Minister of Infrastructure, who informed the Defender that there are no plans of any government draft amendment of the Housing Cooperatives Act for the nearest future, the Defender submitted a lengthy letter to the President of the Extraordinary Parliamentary Committee in the Infrastructure Commission, the task of which was to analyse draft acts amending the Housing Cooperatives Act submitted by MPs, requesting that the Defender's comments be taken into account in the work of the Committee. In the letter concerned, the Defender indicated, among others, that due to the fact that the provision on housing cooperatives which enabled tenants of some flat categories to claim transfer of flat ownership from housing cooperatives for as little as an amount equivalent to the cooperative's expenditure on the flat's maintenance was declared unconstitutional, there is an urgent need to legally define the financial conditions under which a tenant of a flat taken over free of charge by a cooperative might assert his claim to transfer of flat ownership provided in the Act. Due to the lack of a statutory solution to said problem, the Defender joined the proceedings before the Constitutional Court concerning a complaint claiming unconstitutionality of the provision of the Housing Cooperatives Act to an extent in which it binds a housing cooperative to conclude a flat ownership transfer agreement with a tenant of a flat that had been owned by a state-owned company, state legal person or state organisational entity and then was taken over free of charge by a cooperative. This problems will remain in the scope of interest of the Defender.

G. Sale of residential units

In 2010 the Defender took action to create legal regulations ensuring appropriate legal protection to buyers of flats from developers especially in case of developer's insolvency. The above problem was presented to the Prime Minister and accompanied by a request to take legislative steps in this respect. In response, the Defender was assured that the indicated problems are being analysed by the Government Legislation Centre. The above problem was also noticed by the Constitutional Court, which sent to the government the so called 'signal decision' ('postanowienie sygnalizacyjne')

concerning this issue. It is hoped that actions of the Defender in this respect will finally bring results in the form of adequate legal regulations.

H. Housing for officers of uniformed services

In 2010 the Defender remained in correspondence with the Commander in Chief of Police and the Minister of Interior and Administration on housing issues of Police officers. The Defender had to deal with the problem that there are no unambiguous statutory rules for designating flats at the disposal of Police organisational units to be sold to officers living in them, and no provisions laying down in detail the procedure for executing decisions ordering Police officers or their families to vacate a flat. Unfortunately, in both addressed issues the Defender was informed that work on a comprehensive amendment of the Police Act in its section regulating Police officers' right to housing is still in progress.

5. MAJOR ISSUES IN ADMINISTRATIVE AND ECONOMIC AND OTHER LAWS

A. Irregularities in the provision of banking services.

The Human Rights Defender pointed out the practices of financial institutions limiting the access of elderly people to services on financial market, which may constitute age discrimination. The Defender addressed the President of Polish Banks, asking him to comment on the issue of changing the banking practices towards the elderly. The President did not agree with Defender's reproach on limitation in the access to banking services due to the customer age, emphasizing that some banks meet the specific needs of the elderly, offering special services, including, inter alia, special accounts.

B. Transport services

The Defender lodged a motion to the Constitutional Tribunal for a ruling on non-compliance with the Constitution of the provisions of the act on entitlement to concessionary public transport fares. The Defender highlighted that the challenged regulation constituted a breach of the rule of equal treatment and social justice by excluding the kindergarten teachers from the group of teachers eligible to concessionary public transport fares. The Tribunal agreed with the Defender, ruling the challenged regulations as unconstitutional.

In 2010, the Defender pointed to the need for legal regulations increasing the security of railway passengers, as well as providing for better technical and sanitary conditions of railway stations and for eliminating the existing architectonic barriers restricting the access to railway stations and trains for the disabled. The new act on railroad transport increased the entitlements of railway operators at the cost of the passengers rights, which in the opinion of the Defender raises essential doubts as to the public authorities obligation to protect the rights of consumers. The Defender addressed the Minister of Infrastructure requesting for his position on the issue. In response, the Minister informed that the work was in progress on new regulations increasing, inter alia, the responsibility of railway operators, and pointed out that investment schedule was ready for 33 railway stations, some of which will be co-financed from EU funds. The issue remains in the Defender's interest.

The Defender also took action in relation to the change of train time table, made without communicating it properly to the passengers, which resulted in a paralysis of the railroads and a lack of safe journey conditions. The Defender addressed the Minister of Infrastructure, requesting for information on the actions taken against the operators, who get funds from the State budget but do not discharge of the duties

imposed by the employer. The Defender was informed that the Ministry was preparing a draft amendment to the act on railroad transport, which would significantly improve passengers' access to information.

C. Broadband Internet access

The Defender demanded Prime Minister on the governmental plans to provide broadband Internet access for all citizens. The Defender requested an explanation if the government foresees taking actions in favour of the general broadband Internet access and if they established so-called minimum capacity standard of the planned broadband accesses. According to the Defender the use of the Internet allows for an unlimited access to the cultural property, share of information as well as education or higher professional qualifications. It is also crucial for the citizens access to the public administration and it is a source of information on the binding law as well as means of communication between people. The issue is still investigated by the Defender.

D. Public levies

The Defender forwarded a notion to Supreme Administratory Court to rule on the legal issue concerning preferential income tax return of natural persons by single parents. The Defender in his motion indicated variances in case law regarding the taxable persons qualification to the category of single parent, eligible to preferential (together with a child) filing of income tax return of natural persons. Unfortunately, Supreme Administratory Court refused to enact in this case, as it decided that there is no variance in the Court case law.

The Defender demanded Ministry of Finance on the level of custom payment rates for storing good in deposit. In the opinion of the Defender the regulation of Minister of Finance exceeds the framework of the legal entitlement provided in The Customs law. As a response, Minister of Finance informed that in the nearest future the Customs law will be amended and the rates will be established in the act itself instead of a secondary legislation.

In 2010, the Defender addressed the Minister of Culture and National Heritage to get the explanation of lack of equality with regard to the right of redemption from license fee stipulated in the amendment to the act on license fees. The Defender did not get an answer.

E. The observance of citizens' rights by local administration

For a few years now, the Defender has been occupied with the lack of possibility to spread ashes from cremated bodies of the deceased in gardens of remembrance created within cemeteries. In response to the Defender's intervention Minister of Health informed about the creation of interministerial team for elaboration of a relevant act on cemeteries.

In 2010, the Defender submitted to Supreme Administratory Court an appeal against sentence concerning paid parking zones. The essence of the appeal concerned the challenge of the Defender's title to bring the action before the court in the situation when the challenged provision of the resolution of the territorial authorities constituted previously the subject of the ruling issued by the Voivodship Administratory Court. The Defender stated that if they possess the title to juridical control of the resolution making process of the gmina authorities in general, they do not lose the title to appeal in case if the court already decided on the legalness of the resolution, after the appeal was investigated by other entity. Supreme Administratory Court agreed with the Defender.

F. Road traffic

The Defender addressed Minister of Infrastructure with reference to the legislative activities in order to eliminate the cumulation of administrative responsibility and responsibility for traffic violation of drivers parking in paid parking zones without payment. According to the Defender, double punishment for one deed constitutes a breach of the rule of law. Taking into consideration the complexity of the case Minister of Infrastructure demanded Minister of Justice and Minister of the Interior and Administration to refer to the problem. The issue is still investigated by the Defender.

G. Environment protection

The Defender took actions towards the lack of possibility to get allowance for loss on farms or breeding ponds caused by cranes, weasels and stoat living at large. The Defender addressed the Minister of Environment to make him take relevant legislative actions. In response, Minister stated that the change of provisions in impossible in this respect because it is difficult to estimate the damage caused by cranes, otters, weasels and stoats.

The Defender asked the Minister of Environment to decide on the complaints regarding limited possibilities of protection against noise produced by some vehicles. The limitations result from the omission of poviat roads, in the relevant resolution of Ministry of Environment, on the list of traffic infrastructure constructions whose owners are obliged to measure the level of noise periodically. Minister did not share the Defender's doubt and he focused on the possibility of the acoustic control of the impact on the poviat roads environment during the planned controls conducted by Voivodeship Inspectorate for Environmental Protection, or in form of controls conducted with reference to complaints of the inhabitants stemming from road utilisation.

H. Health care system

The Defender addressed the Minister of Health with regard to actions taken to improve the condition of health care system. The control of public health care facilities, carried out by the Supreme Audit Office, revealed numerous irregularities in the use of buildings which are in poor technical condition, often posing risk to life and health of people, as well as in the use of medical facilities; it also revealed cases of mismanagement and irregularities in accounting records. In response, the Defender was informed that the Main Inspector of Building Supervision, the Chief Sanitary Inspector, and the Commander-in-Chief of the State Fire Brigade were ordered to take relevant actions and carry out control of all of the negatively evaluated service providers. What is more, the Minister of Health informed that the new draft act on medical products has been prepared, which specifies in details what requirements the service providers must meet. The issue is still investigated by the Defender.

An attempt to limit the financing of oncologic treatment with non-standard chemotherapy by National Health Fund was an object of the Defender's address to Prime Minister. The Defender demanded for basic verification of the national health policy. In response, Minister of Health explained that in addition to the binding legal provisions specifying the rules of access to non-standard chemotherapy, there are guidelines for uniform interpretation of the provisions in all National Health Fund divisions. It should be mentioned that it is a voivodeship consultant who participates in making decision on non-standard chemotherapy, which is made on the basis of the analysis of effectiveness and cost issued by President of Agency for Health Technology Assessment.

In his address to Ministry of Health, the Defender raised the issue of insufficient legal solutions with regard to health care financing for the homeless. The obligation of insurance comprise the homeless, people who stop being homeless and who are not subject to insurance on other grounds. Other homeless people may benefit from

health services only if they meet the income criteria stipulated in the act on social care, who do not have sufficient amount of money. Such a solution, in the opinion of the Defender, raises doubts especially in the context of constitutional guarantee of equal access to health care services financed from the public resources independently on their financial status. Minister did not agree with the Defender and informed that the regulations on constitutional right for health care are sufficient in his opinion.

In 2010, the Constitutional Tribunal examined the Defender's motion concerning non-compliance with the Constitution of the provisions on health care services financed from public resources, obliging the State Budget to finance health care contribution for farmers regardless of their income. The Constitutional Tribunal agreed with the Defender and made a ruling on unconstitutionality of the challenged provisions.

I. Protection of the rights of patients

The Defender reported to Minister of Health a problem concerning invasion of the right to privacy and dignity of a patient, on, among others, a patient's resignation from third persons assistance during provision of a medical service by health care facility forming medical staff. The presumption that a patient of such a facility agrees for the limitation or invasion of the right to privacy is based on the act on physician and dentist profession, which excluded the obligation to acquire a patient and medical service provider consent for the assistance of third persons during the provision of the service. In response the Defender was informed that the problem will be taken into consideration in the future legislative process carried out by Ministry of Health.

The Defender was informed about the difficulties to get informed on the health condition of a partner, met by other people (including both a spouse and a partner) as well as problem s with the right of burial. In relation to that the Defender requested Ministry of Health to consider possibility of taking actions towards elimination of the health service facilities where the irregularities happen. In response, it was indicated that in case when a patient health condition get worse or in case of their death, the hospital is obliged to inform a person indicated by the patient, also an informal partner. The act on cemeteries and burial specified the entities entitled to the burial of a deceased person, including the closest family as well as a person who will voluntarily commits themselves to it.

In 2010, the Defender forwarded a motion to Constitutional Tribunal regarding the non-compliance with the constitution of the provision on double consent for treatment i.e. the consent of a minor patient and the consent of their legal guardian, in case of the treatment of a minor patient, not more than 16 year old. The essence of the motion was the accusation that the age limit did not take into account the level of maturity and ability to express one's opinion of the minor but only their age. The Constitutional Tribunal is considering the issue.

J. Protection of the rights of disabled

The consideration of application for funding from State Fund for rehabilitation of Disabled Persons for people with limited mental abilities, which depends on the level of incapacitation of them, raised material doubts of the Defender. Assuming that incapacitation constitutes an important interference in liberty of the subject and that the institution has been created for the sake of an ill person, the Defender approached the Minister of Labour and Social Policy for his opinion on the above-mentioned problem and possibility to change the regulations. Minister did not agree with the Defender.

In a letter to the Government Plenipotentiary on the Disabled the Defender communicated on parents and legal guardians doubts concerning the procedure of stating a temporary disablement (for 2-3 years) in case of the minor suffering from terminal disease or a congenital anomaly, which make them apply for temporary (multiple) qualification of a child as a disabled person, which is troublesome to parents. In response, the Plenipotentiary did not agree with the Defender proposal to decide on the disability of a child until they are 16 years old, in case of congenital anomaly, because of complex medical, rehabilitation, corrective and educational effects, which are difficult to predict.

In his address to Minister of Labour and Social Policy, the Defender mentioned the issue of the lack of possibility for disabled persons preparing for independent professional work, inter alia, legal professions, to apply to State Fund for Rehabilitation of Disabled Persons for financing within the programme " Student II- continuing vocational training". The Defender stated lack of basis for the present solution and inequality of treatment of the disabled. Minister did not agree with the Defender as the binding provisions of the STUDENT II programme exclude the possibility to apply for financial support for people preparing for independent professional work. At the same time, Minister assured that State Fund for Rehabilitation of Disabled Persons is constantly analysing programs taking into account their financial and social influence. Depending on the results of the analysis and financial means the programmes are modified and adjusted to the changing situation.

K. Protection of the rights of foreign nationals

The condition of foreign nationals is a centre of the Defender's attention. The majority of complaints submitted to the Defender was concerned with the legalisation of residence on the territory of the Republic of Poland and issues related to the deportation procedure. The Defender got complaints from people who were arrested in order to deport them as well as kept in guarded centres for foreigners and from

foreign nationals applying for a refugee status or already holding such status. The other issued concerned the problems with border traffic. During an inspection of airports, the service standards and the condition of security control made by Polish border service, have been analysed in details. The examination embraced especially the problem of security control for persons who for some reasons eg. religious or cultural wear characteristic headwear and who, according to the principles of religion or culture, cannot take it off in public. The Defender highlighted the necessity to provide due privacy for the people during the check.

L. Protection of the rights of national and ethnic minorities

The complaints made by the national and ethnic minorities representatives concerned the relation between minority communities or organisations representing them and the public authorities. The Defender took also actions in relation to living conditions of Romani people. Moreover, the Defender continued the actions with regard Romani families living in 6 unpermitted buildings in Koszary. The Defender is worried with the condition of living of Romani people. Poverty caused by the lack of income, low level of education, any in many cases, illiteracy and lack of any vocational qualifications push them to the social margin. In the opinion of the Defender, the overcoming of this situation is a long-lasting process which need further involvement of public administration, local communities and the people in question.

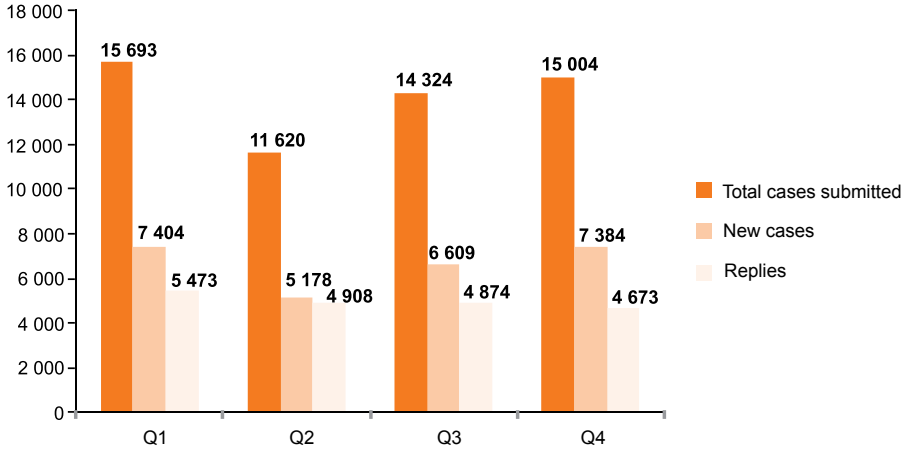
6. STATISTICAL INFORMATION

Cases submitted to the Office of the Human Rights Defender

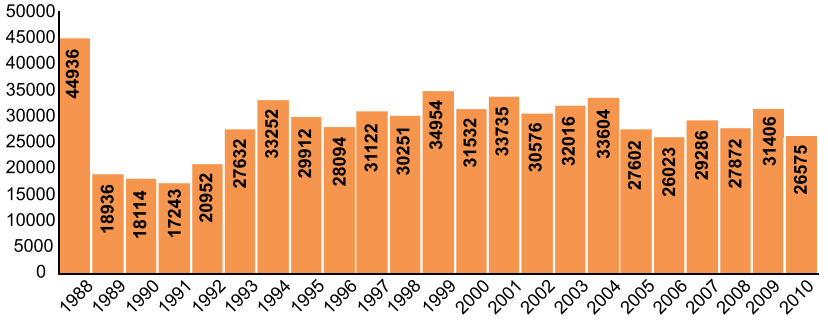
	2009 (1.01. – 21.12)	2010 (1.01. – 21.12)	%	Entire operation period of the HRD
Total number of cases received	65,208	56,641	-13.1	1,100,342
Number of new cases	31,406	26,575	-15.4	665,625
Number of replies to the Defender's petitions	21,706	19,928	-8.2	368,873

In 2010, the Office of the HRD received 6,217 applicants and answered 22,763 phone calls, providing advice and information.

Cases submitted to the Office of the HRD in 2010



Total number of new cases in the years 1988–2010

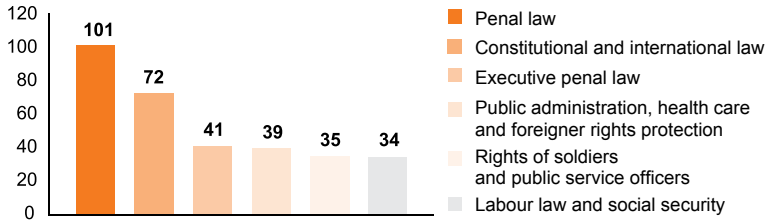


The Human Rights Defender:	**2010**
1) made interventions concerning systemic problems	293
– including motions to take a legislative initiative	95
2) submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a higher level act	10
3) made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	10
4) addressed juridical questions to the Supreme Court	6
5) made cassations	61
6) filed cassation appeals with the Supreme Court in civil cases	3
7) filed cassation appeals with the Supreme Administrative Court	1
8) submitted motions to the Supreme Administrative Court for interpretation of regulations	3
9) filed complaints with Voivodeship Administrative Courts	9
10) submitted requests to annul a ruling	1
11) joined court proceedings	3
12) joined administrative proceedings	4

Of 404 general petitions and special appeal measures made by the Defender in 2010, the majority concerned the following:

Problem area	**Number**	**%**
Penal law	101	25.0
Constitutional and international law	72	17.8
Executive penal law	41	10.1
Public administration, health care and foreigner rights protection	39	9.7
Rights of soldiers and public service officers	35	8.7
Labour law and social security	34	8.4

General petitions by problem area

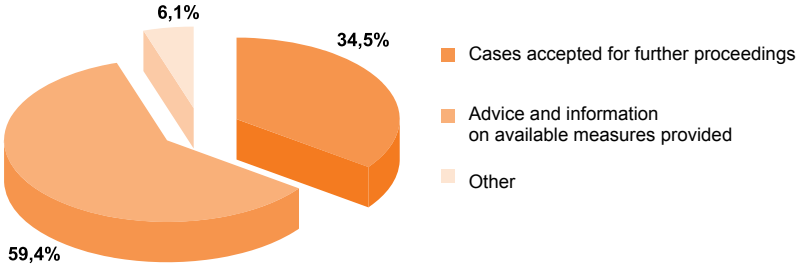


Cases examined in 2010

In the period covered by this Report, 34,248 new cases were examined, of which:

	Manner of investigation		Number	%
1	**2**		**3**	**4**
Cases accepted for further proceedings	1	**Total**	**11,810**	**34.5**
	2	accepted for further proceedings of which: on the initiative of the HRD	9,714 735	28.4
	3	as general petitions	2,096	6.1
Advice and information on available measures provided	4	**Total**	**20,360**	**59.4**
	5	advice and information on available measures provided	20,360	59.4
Other	6	**Total**	**2,078**	**6.1**
	7	complaint referred to a competent authority	545	1.6
	8	complaint returned to be supplemented with necessary information	550	1.6
	9	not accepted for further proceedings[1]	983	2.9
Total			**34,248**	**100.0**

Manner of investigation in 2010



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

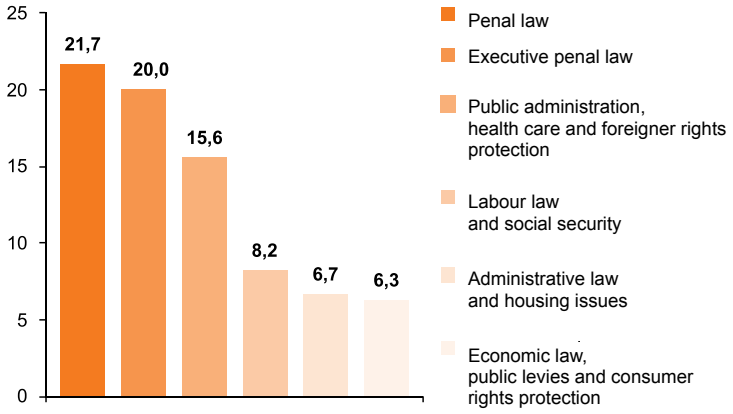
Of 34,248 complaints examined by the HRD, the majority fell mainly within the scope of the following:

Problem area	**Number**	**%**
Penal law	6,937	20.3
Civil law and real property management	4,441	13.0
Executive penal law	4,421	12.9
Labour law and social security	4,316	12.6
Constitutional and international law	3,907	11.4
Public administration, health care and foreigner rights protection	3,733	10.9
Other	6,493	22.6

Of 34,248 complaints examined in 2010, 11,810 were accepted for further proceedings and mainly concerned the following:

Problem area	**Number**	**%**
Penal law	2,561	21.7
Executive penal law	2,362	20.0
Public administration, health care and foreigner rights protection	1,843	15.6
Labour law and social security	966	8.2
Administrative law and housing issues	794	6.7
Economic law, public levies, consumer rights protection	742	6.3
Other	2,542	21.5

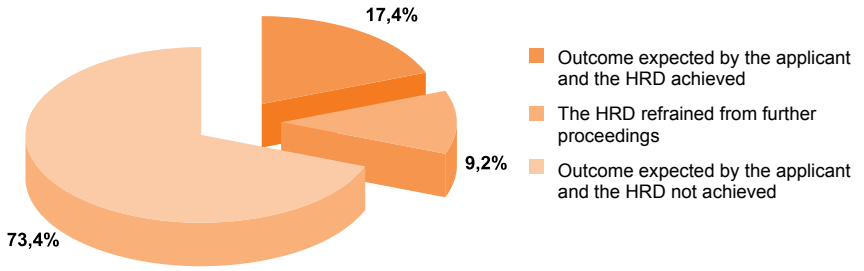
Cased examined by problem area



Proceedings were completed in 11,963 cases undertaken in 2010 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)**	**2,082**	**17.4**
	2	Applicant's claims confirmed	1,270	10.6
	3	General petition of the HRD acknowledged	812	6.8
Proceedings discontinued	4	**Total (5+6)**	**1,095**	**9.2**
	5	Proceedings pending (ongoing procedure)	408	3.4
	6	The HRD refrained from further proceedings (objective reasons)	687	5.8
Outcome expected by the applicant not achieved	7	**Total (8+9+10)**	**8,786**	**73.4**
	8	Applicant's claims not confirmed	7,141	59.7
	9	General petition of the HRD not acknowledged	1,632	13.6
	10	Measures available to the HRD exhausted	13	0.1
Total			**11,963**	**100,0**

Completion of cases undertaken

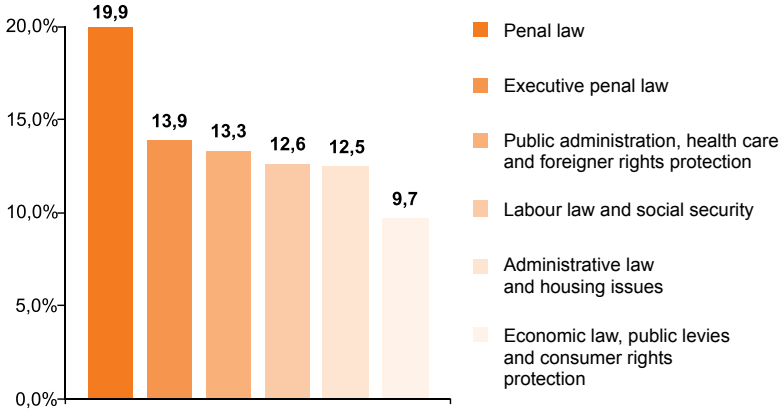


Problem areas targeted by new cases (applications) in 2010

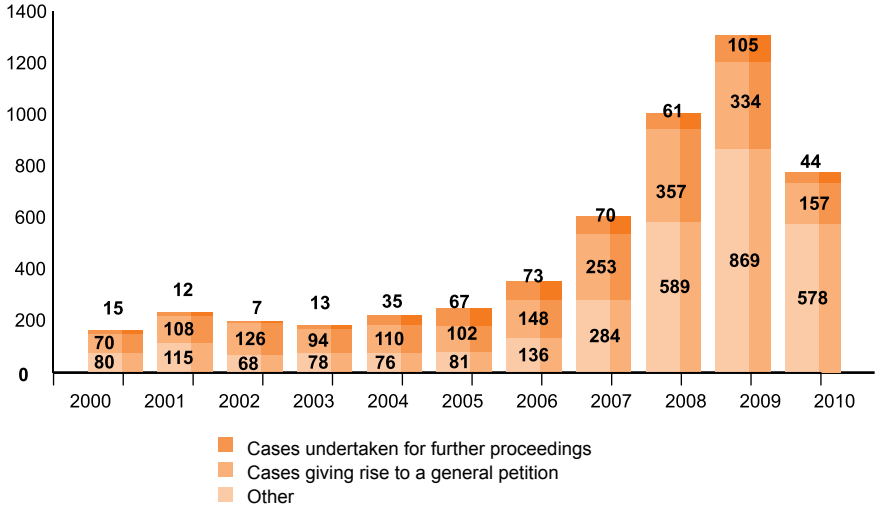
Problem area	Number	%
1. Constitutional and international law	3,685	13.9
2. Penal law	5,297	19.9
3. Labour law and social security	3,532	13.3
4. Civil law and real property management	3,324	12.5

5.	Administrative law and housing issues	2,090	7.9
6.	Economic law, public levies, consumer rights protection	2,583	9.7
7.	Executive penal law (National Preventive Mechanism)	3,354	12.6
8.	Rights of soldiers and public service officers	390	1.5
9.	Public administration, health care and foreigner rights protection	2,041	7.7
10.	Other	279	1.0
11.	**Total**	**26,575**	**100.0**

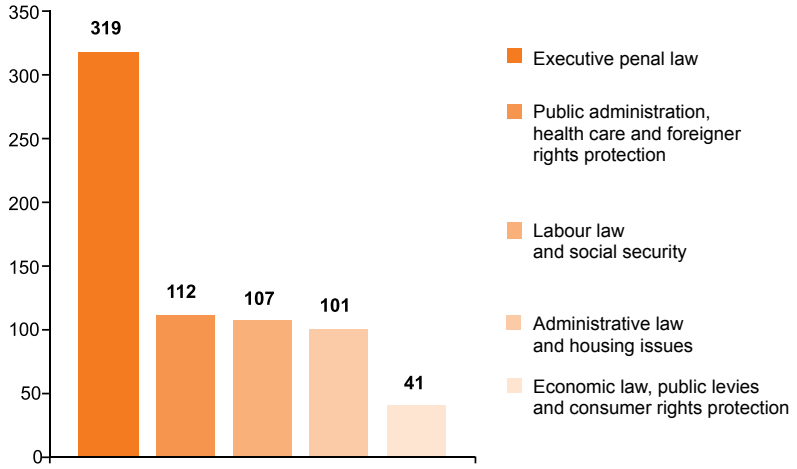
Major problem areas targeted by new cases in 2010



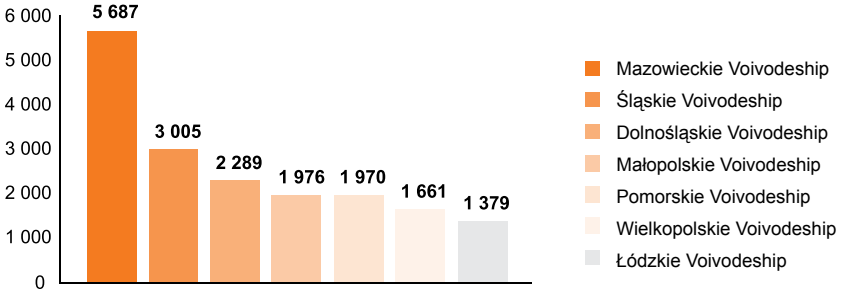
Cases initiated by the HRD



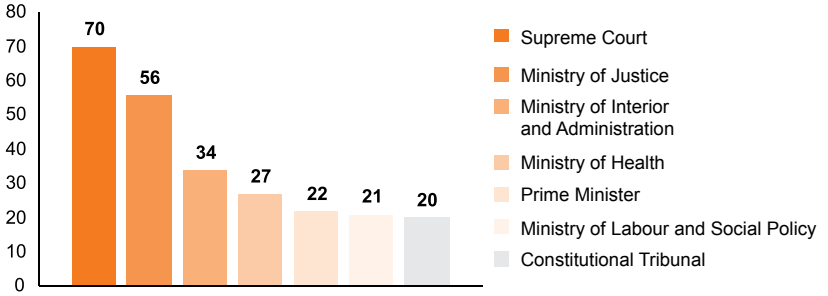
Cases initiated by the HRD by problem area



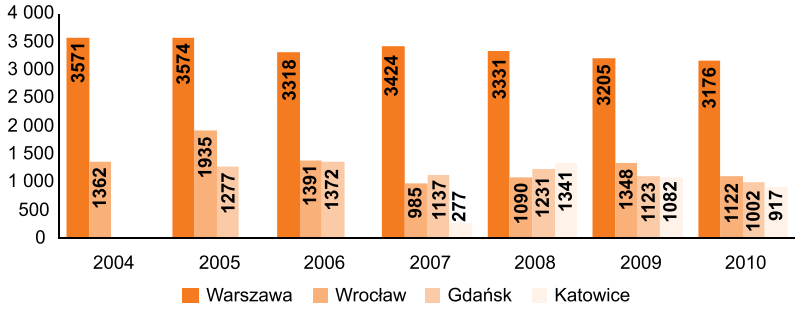
Greatest number of new cases by particular Voivodeships



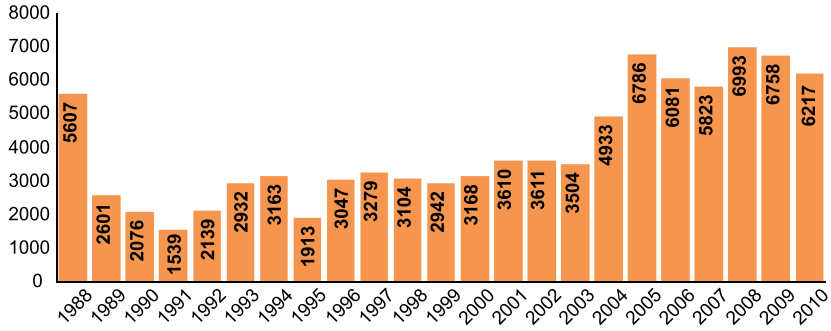
Major addressees of petitions by the HRD



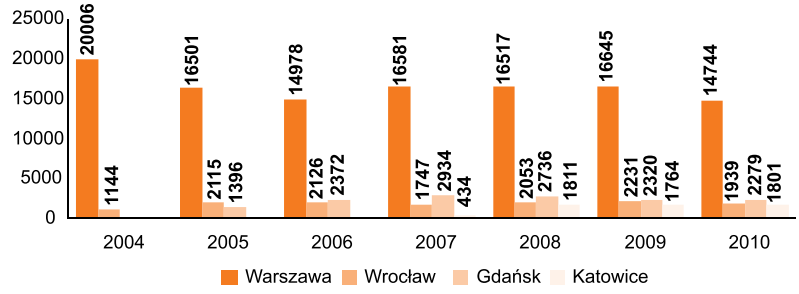
Applicants received



Applicants received in the years 1988–2010

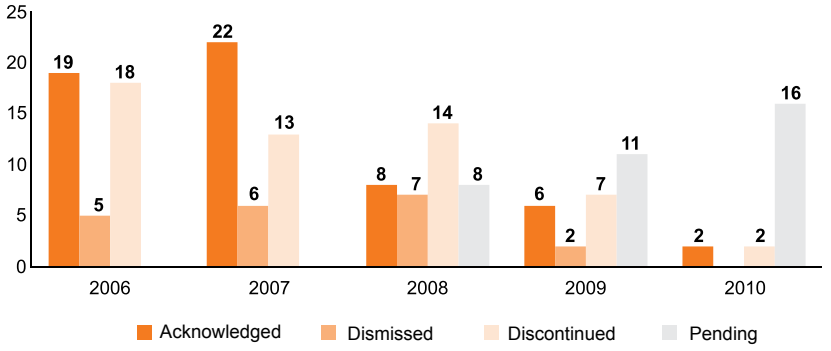


Advice provided by telephone

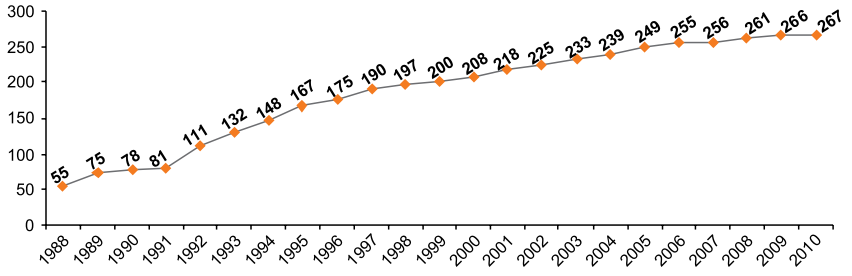


Motions to the Constitutional Tribunal and proceedings in constitutional complaint cases joined by the HRD

Decisions of the Constitutional Tribunal on motions to declare the regulations incmpatible with the Constitution and on proceedings in constitutional complaint cases joined by the HRD[2]

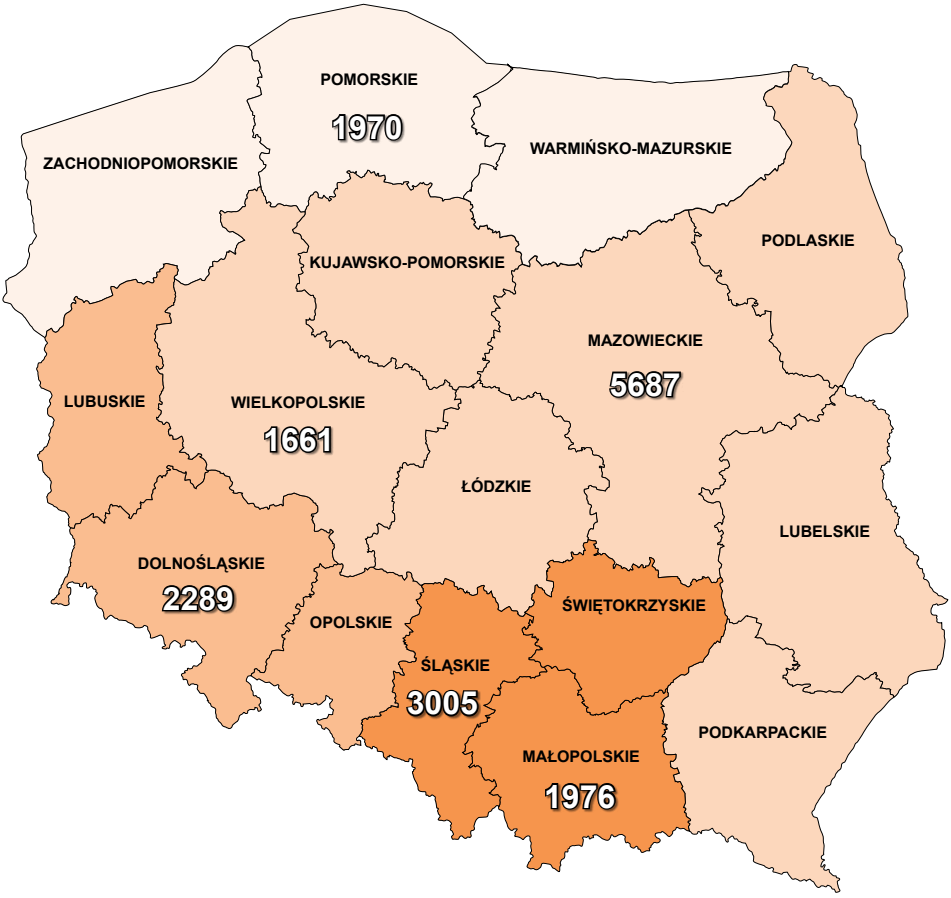


Personnel of the Office of the HRD – number of FTEs

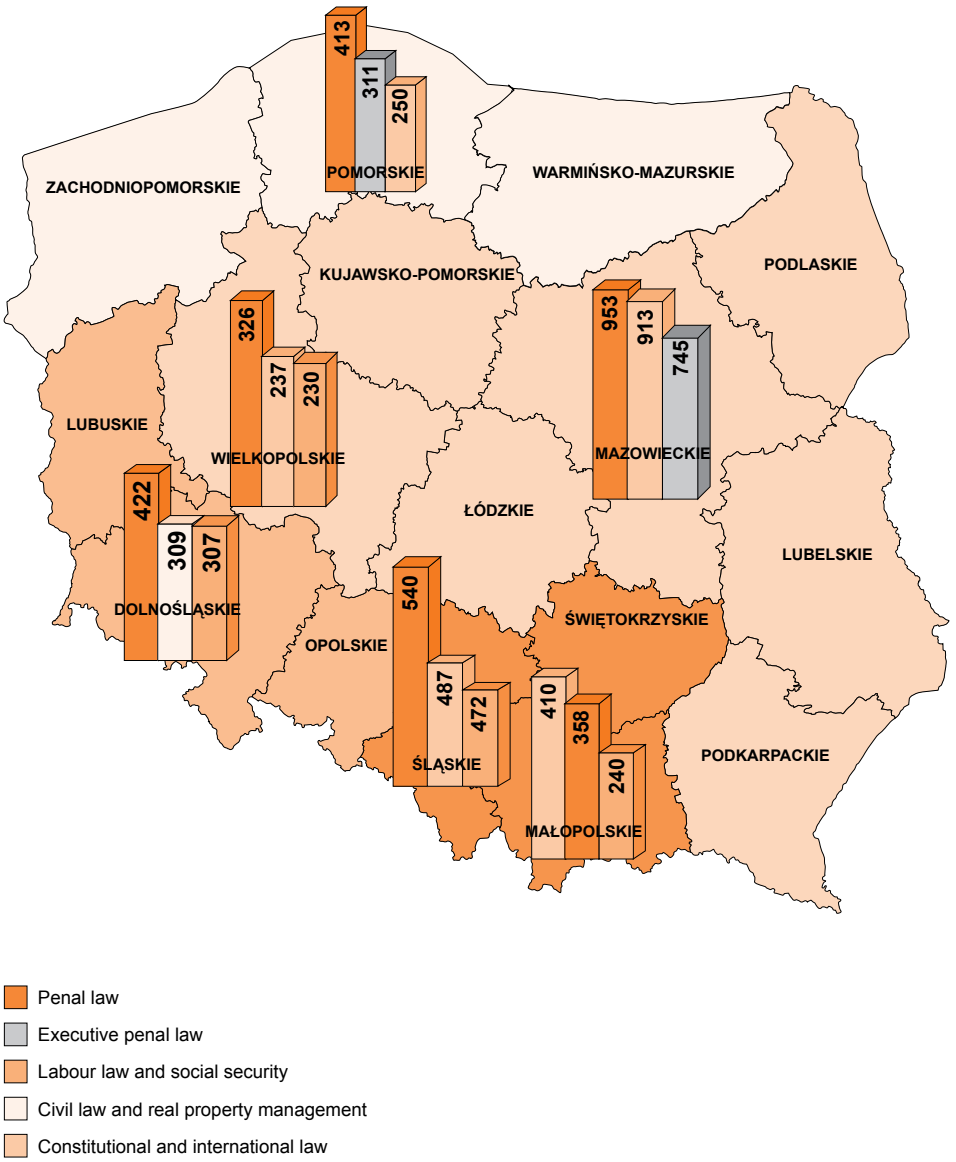


[2] As of 31 December 2010.

The largest number of new cases by particular Voivodeships in 2010



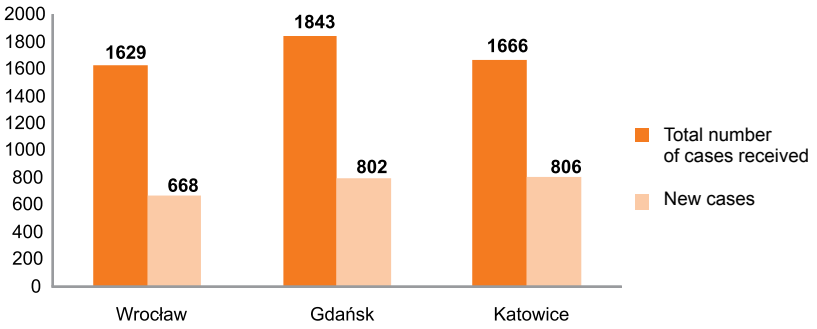
Major problem areas targeted by new cases in Voivodeships with the greatest number of new cases in 2010



Offices of Field Plenipotentiaries

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

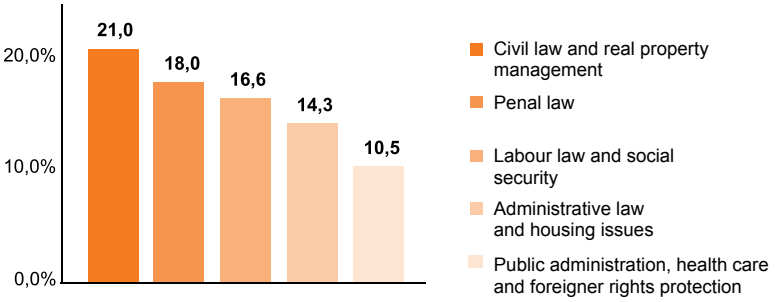
Cases received by Offices of Field Plenipotentiaries



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

Problem area	**Number**	**%**
Civil law and real property management	479	21.0
Penal law	406	18.0
Labour law and social security	378	16.6
Administrative law and housing issues	325	14.3
Public administration, health care and foreigner rights protection	240	10.5

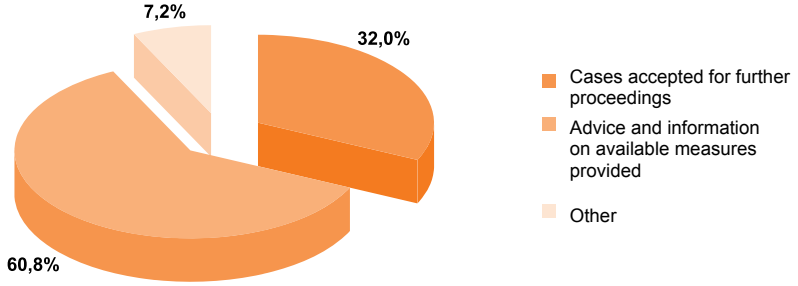
Major problem areas in Offices of Field Plenipotentiaries



During the period covered by this Report, 2,640 new cases were examined by Offices of Field Plenipotentiaries, of which:

Manner of investigation	Number	%
Cases accepted for further proceedings	845	32.0
Advice and information on available measures provided	1,605	60.8
Complaint referred to a competent authority	58	2.1
Complaint returned to be supplemented with necessary information	32	1.2
Not accepted for further proceedings[3]	100	3.7

Manner of investigation by Offices of Field Plenipotentiaries



Offices of Field Plenipotentiaries completed proceedings in 844 cases undertaken in 2010 and in previous years.

Results		Manner of completion	Number	%
1		2	3	4
Outcome expected by the applicant achieved	1	**Total (2+3)**	**176**	**19.9**
	2	Applicant's claims confirmed	154	17.4
	3	General petition of the HRD acknowledged	22	2.5
Proceedings discontinued	4	**Total (5+6)**	**94**	**10.6**
	5	Proceedings pending (ongoing procedure)	42	4.7
	6	The HRD refrained from further proceedings (objective reasons)	52	5.9
Outcome expected by the applicant not achieved	7	**Total (8+9+10)**	**614**	**69.5**
	8	Applicant's claims not confirmed	598	67.6
	9	General petition of the HRD not acknowledged	4	0.5
	10	Measures available to the HRD exhausted	12	1.4
Total			**884**	**100.0**

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

Completion of cases undertaken by Offices of Field Plenipotentiaries