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for. BRPO

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(Ombudsman in Poland)

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**Summary of the Report on the Activity  
of the Ombudsman in Poland in 2013 with Remarks  
on the Observance of Human and Civil Rights and Freedoms**

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# SUMMARY

of the Report on the Activity  
OF THE OMBUDSMAN  
IN POLAND

in 2013

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

Full text of the “Report on the Activity of the Human Rights Defender  
in 2013...” is available in Polish on [www.rpo.gov.pl](http://www.rpo.gov.pl)

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# Introduction



In accordance with Article 80 of the Constitution of the Republic of Poland, everyone shall have the right to apply to the Human Rights Defender for assistance in protection of his freedoms or rights infringed by organs of public authority. Applications filed to the Defender are free of charge and do not require any particular form. In view of a broad legal basis and the absence of formal requirements or financial barriers, the Defender receives numerous applications: in 2013 she received 70,002, of which 35,310 applications concerned new cases (an increase by 22.2% compared to 2012). The majority of applications concerned administrative and economic law (35.0%), penal law (31.1%), civil law (14.8%), and labour law and social security (13.2%).

The Defender can also act on her own initiative, *inter alia*, following an analysis of media reports. The Defender also took up cases *ex officio* upon receiving notifications on the so-called extraordinary events involving public officials (e.g. from prisons, pre-trial detention centres, Police). In 2013, 581 cases were examined on the Defender's own initiative (of which 128 took the form of a general petition).

In her work, the Defender is assisted by the Office of the Human Rights Defender. In 2013, these tasks were performed by the Warsaw-based Office and Offices of Local Representatives in Wrocław, Gdańsk, and Katowice, as well as customer service points in Wałbrzych, Częstochowa, Krakow, Kielce, Olsztyn, Bydgoszcz and Lublin. In 2014, the points in Wałbrzych, Krakow, Kielce and Olsztyn were closed due to a budget reduction.

Within the period covered by this Report, 42,430 cases were examined, of which 19,746 cases were undertaken under the procedure established by the Act on the Human Rights Defender as they concerned possible infringements of civil rights or freedoms. In 19,803 cases, the applicants were advised of the measures they could take; in 831 cases the applicants were requested to supplement their applications, whereas 766 cases were referred to the competent authorities. A high number of cases where the applicants were advised on the available measures shows that the knowledge of the law is still insufficient among Polish citizens. It also proves that there is no universal system of free legal advice. This is why so many people who address the Defender expect to obtain information on how and where to turn to have their problems solved rather than to have their rights protected.

In 2013, the staff of the Defender's Office talked to 6,592 people personally (including 3,176 persons who visited the Offices of Local Representatives and Customer Service Points).

Furthermore, in 2013, the staff of the Human Rights Defender's Office answered 39,683 phone calls to provide explanations and advice. It was largely possible thanks to the free Infoline of the Defender. The purpose of the Infoline is to provide basic information on human rights and HRD competence.

Within the period covered by the Report, the Defender addressed 281 petitions concerning specific problems to competent authorities. The Defender used this very important way of highlighting breaches of rights or freedoms of an individual when





the particular cases examined showed a more and more common practice of applying law in a way resulting in such breaches. The petitions were also addressed when an analysis of the complaints submitted to the Defender shown that the law itself was the source of breaches of the rights of an individual. As regards the latter, in 2013 the Human Rights Defender lodged 143 petitions for a legislative initiative. Irrespective of the above, the Defender exercised her legal standing to challenge a faulty normative act in force. In 2013, the Human Rights Defender addressed 27 petitions to the Constitutional Tribunal to verify normative acts for their compliance with superior regulations or with the Constitution. The Defender also joined 13 proceedings instituted before the Tribunal by other entities as a result of a constitutional complaint.

In the relations with the judiciary, the legal inquiries of the Defender referred to extended adjudication panels are of particular importance. The inquiries are intended to make court decisions uniform, and as such they constitute a remedy aimed at protecting the principle of equality before the law. In practice, inconsistent interpretation of the law by the courts leads to infringement of the principle of equality before the law. In connection with the divergences found in the case law of national courts, the Human Rights Defender addressed three legal inquiries to be resolved by the extended adjudication panel of the Supreme Court in 2013. Divergences in the case law of administrative courts inspired the Human Rights Defender to address eight legal inquiries to be resolved by the extended adjudication panel of the Supreme Administrative Court.

As to individual cases examined by courts, the Defender lodged 66 cassation appeals to the Supreme Court against legally binding decisions of the common courts of law. In administrative cases, the Defender lodged 21 cassation appeals to Voivodeship Administrative Courts and 7 cassation appeals to the Supreme Administrative Court.

2013 was the sixth year when the Human Rights Defender acted in the capacity of the National Preventive Mechanism. In the period, NPM representatives held 124 preventive visits to different places of detention, of which: 14 visits to prisons, 11 to pre-trial detention centres, 4 to external facilities of penitentiary units, 31 to facilities for detainees of Police organisational units, 4 to Police child emergency centres, 7 to juvenile detention centres, 3 to juvenile shelters and juvenile detention centres (complexes), 15 to young offenders' institutions, 4 to sobering stations, 11 to mental hospitals and 21 to welfare care homes. In 2013, the activity of the Mechanism was executed by a specialised team visiting all types of places of detention. At the end of the year, the National Preventive Mechanism team consisted of 15 people employed at 14 FTEs. The National Preventive Mechanism team was also supported by personnel of the Offices of Local Representatives in Gdańsk, Wrocław and Katowice.

2013 was the third year when the Defender performed the tasks she was entrusted with pursuant to the Act on the implementation of some regulations of



European Union regarding equal treatment.<sup>1</sup> The basic responsibilities of the Human Rights Defender include examination of the applications she receives, including complaints about violation of the equal treatment principle, and taking relevant actions in accordance with the Act on the Human Rights Defender. In the framework of implementing the equal treatment principle, the Defender was obliged to perform a wide range of new tasks, such as analysing, monitoring and supporting equal treatment of all people, carrying out independent studies on discrimination, as well as drafting and publishing independent reports and issuing recommendations as to problems related to discrimination.

In the framework of these new tasks, the Defender published five reports from the *Equal Treatment Principle. Law and Practice* series. They were:

- Elderly People in the Financial Services Market. Analysis and Recommendations;
- Counteracting Violence Against Women, Including Elderly and Disabled Women. Analysis and Recommendations;
- Intergenerational Dialogue. Between Idea and Practice. Inspirations;
- Accessibility of Websites of Public Institutions to People with Disabilities. Analysis and Recommendations;
- Execution of the Right of Juvenile Foreigners to Education.

The Defender continued to monitor the operation of public institutions with respect to preventing discrimination. She analysed the case law of Polish and international courts in terms of the implementation of the equal treatment principle on an ongoing basis and formulated conclusions for state authorities.

As Poland ratified the Convention on the Rights of Persons with Disabilities, the Defender was designated as the independent body that supports, protects and monitors the Convention's implementation. It should be noted that the new competences of the Defender in this area have not been reflected by the amendment of the Act on the Human Rights Defender and the Defender performs these tasks solely on the basis of an arrangement with the Ministry of Labour and Social Policy. This solution cannot stay permanent.

The Defender intensively cooperates with associations, citizens' movements, unions and foundations acting for the protection of freedom as well as human and civil rights. In the framework of the cooperation, the Office of the HRD organised 105 meetings, seminars and conferences devoted to the observance of human rights in a broad sense. They were devoted primarily to the Defender's priorities, i.e. the protection of the rights of the elderly, the disabled and migrants.

Social and educational activity of the Defender in 2013 was of a multifaceted nature. In 2013, the "Evening with the Defender" project was launched in cooperation with the Centre for Citizenship Education (CEO). It envisages organising regular

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



open meetings with the citizens across Poland. The purpose of the project is to expand citizens' knowledge on the rights enshrined in the Charter of Fundamental Rights of the European Union and to teach them how to respond to violations of those rights.

Meetings and debates on important problems raised by citizens and NGOs were organised in and out of the Office of the HRD. They concerned, *inter alia*, the voting rights of seniors and persons with disabilities, the rights of foreigners governed by regulations concerning residence and labour market, improvement of safety of public gatherings and mass events, discrimination of people with mental illnesses, social exclusion of persons with rare diseases, the strategy of action for the ageing society, educational needs of seniors and the situation of seniors as consumers on the market of goods and services, and the system for preventing violence. Two Jan Nowak-Jeziorański Debates devoted to the contemporary understanding of notions such as tolerance and solidarity were held with the participation of distinguished scientists and NGO representatives. It should also be noted that the Defender's Office staff organised trainings for the Sejm deputies' and Senators' assistants and judges on human rights and the Defender's competence. The educational activity was supplemented by numerous publications, brochures and informational leaflets, also in foreign languages, distributed in different circles. The Defender has also published 23 books and e-books, also in English, whose total number was 29,200 copies.

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

As to the international activity of the Defender, in 2013 she continued the work for the International Ombudsman Institute (IOI) as she was elected member of its European Board and Board of Directors in 2012. She attended the session of the Board of Directors in Vienna.<sup>2</sup> The European Board of the IOI organised its session in Brussels.<sup>3</sup> Discussions during the session concerned, *inter alia*, the rules of IOI membership, in particular the newly established offices, financing of projects implemented by Institute members by the IOI and defining the Secretariat organisation rules.

In 2013, the Office of the HRD hosted a number of meetings with representatives of Ombudsman institutions from all over the world. The Defender met *inter alia* with the Ombudsman of Ukraine,<sup>4</sup> Sweden<sup>5</sup> and representatives of the Na-

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<sup>2</sup> On 16 April 2013.

<sup>3</sup> On 22 October 2013.

<sup>4</sup> On 28 February 2013.

<sup>5</sup> On 27 September 2013.



tional Human Rights Commission of Korea.<sup>6</sup> She received a delegation of Ombudsmen from Turkey and Wales.

In 2013, the Cooperation between Ombudsmen from Eastern Partnership Countries programme ended. The project was implemented since 2009 by the Polish Human Rights Defender and the Mediator of the French Republic in cooperation with Ombudsmen and representatives of NGOs from Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. A three-day seminar devoted to Cooperation between Ombudsmen from Eastern Partnership Countries was held in Kiev.<sup>7</sup> It was the last event under the project, summing up the whole undertaking. The seminar was divided into three thematic blocks: basic political rights, powers of the security services in the context of civil rights guaranteed in the Constitution and by international legal acts and the rights of people with disabilities. The possibilities of further development of the initiative were discussed. All representatives of Eastern Partnership countries were in favour of continuation of the project.

In 2013, the European Commission published its first Anti-Corruption Report which depicts its scale in 28 EU Member States. The European Commission presented activity of the Human Rights Defender as a positive example of fighting corruption in Poland. The report emphasised that the Defender has built a reputation for independence despite limited resources and has helped strengthen standards of public life.

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<sup>6</sup> On 16 December 2013.

<sup>7</sup> On 3-5 September 2013.



# **Major issues concerning constitutional and international law**



## A. Right to good legislation

In 2012, the Constitutional Tribunal found a substantial part of the Act on family allotment gardens incompliant with the Constitution. Among others, the provisions which grant owners the right to their allotments will become void in January 2014. The Defender requested the Marshal of the Senate to take the upcoming date of entry into force of the Constitutional Tribunal verdict into account when planning work on the Act on family allotment gardens. The new act should also comprehensively govern the use of allotment gardens and ensure stability and foreseeability of state policy in this area.

One of important problems tackled by the Defender is the institution of a public hearing. In her letter to the Marshal of the Sejm, the Defender presented proposals for changes in the provisions of the Standing Orders of the Sejm which concern the institution of a public hearing which, despite its significance, is not currently widely used in parliamentary practice. Clarity and transparency of public hearing should be a standard. The Defender submitted comments on the terms of passing a resolution expressing consent to holding a public hearing, the plausible reasons for cancelling a public hearing, and a convenient way of collecting and publishing information obtained during a public hearing by a relevant committee.

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

The Defender petitioned the Minister of Sport and Tourism on the provisions of the Act on sport which entrust the tasks of disciplinary courts to sport associations and refer to internal acts, when it comes to disciplinary sanctions for breach of member obligations and the procedure of conduct. Due to the repressive nature of disciplinary proceedings, the rules and terms of imposing disciplinary penalties should be governed by the Act on sport, not by by-laws of sport associations. The legislator also failed to define whether it is possible to lodge an appeal against a disciplinary decision of a sport association body to a common court of law. The matter was left for sport associations to decide, which may infringe the constitutional rights to a trial.

The Defender also addressed the problem that it is impossible to claim the right to membership in a hunters' association in court. In the Defender's view, individuals should have a possibility of claiming their rights with respect to acquiring or losing membership of the Polish Hunting Association and losing membership of a hunters' association before a court once all options of procedures within the organisation are exhausted. The Minister of the Environment, whom the Defender petitioned in this respect, stated that the currently prepared amendment of the Hunting Law does not provide for a possibility to appeal against a refusal to be accepted to a hunters' as-



sociation to a common court of law, similar as the current provisions. The Defender continues to monitor the issue.

Analysis of complaints filed to the Defender shows that lengthiness of court proceedings results in many instances from long waiting time for expert opinions. In the Defender's opinion, the Polish law lacks a single act that would exhaustively govern the work of expert witnesses, such as the procedure of appointing and supervising them, verification of candidates for expert witnesses and the rules of their remuneration. The Defender addressed the Minister of Justice to clarify the issue. The reply said that the Ministry is working on a new version of draft assumptions for the Act on expert witnesses. The Defender will monitor the work.

An unsolved problem of the Polish judiciary is ineffective functioning of the institution of court-approved physicians which manifests as scarcity of physicians interested in this function. In the Defender's opinion, in order to ensure efficient and universal access of citizens to court-approved physicians it is necessary for the Ministry of Justice to adopt effective systemic solutions that would result in streamlining the procedures of attracting candidates for this position. The Defender addressed the Minister of Justice to clarify the issue. The Minister declared that legislative work was undertaken to amend the Act on court-approved physicians. The Defender will monitor the work.

The Defender keeps receiving complaints on the functioning of the institution of a lay judge. One of the basic issues is that regulations fail to describe in detail the entity, manner and means to allow a board of lay judges to perform the obligation to improve the work of lay judges and that the number of lay judges in common courts is declining. In the Defender's opinion, it is worthwhile to consider establishing organisational supervision of the National Council of the Judiciary over lay judges in common courts and potential supervision of the Minister of Justice over how the obligation of lay judges to improve their qualifications is performed. The Defender petitioned the Minister of Justice to consider an initiative aimed at introducing legislative and organisational changes. The Minister did not share the Defender's position. In the Minister's view, the current regulations serve correct functioning of the institution of a lay judge in Polish law and are sufficient. The Defender exhausted all her options to act in this regard.

The Defender received complaints from some persons who were screened when entering court buildings, including searches of their bags, in case they brought hazardous objects to courts. The Act on the protection of persons and property does not explicitly provide for such screening. Understanding the need for such precautions, the Defender petitioned the Minister of Justice on the need to introduce a statutory provision that would authorise the application of personal screening and searching of clothes and belongings of the people who enter court buildings. In his reply, the Minister agreed that the change proposed by the Defender would streamline the protection of courts from violation of security and order rules and presented a draft amendment of the Act – Law on Common Court Organisation.



The cases examined by the Defender revealed a systemic problem that there is no specific deadline for processing a motion to waive formal immunity of a parliamentarian by Sejm bodies, which may hinder or altogether prevent effective enforcement of the right to a trial of a person affected by behaviour of a deputy covered by the motion. In the Defender's opinion, the Standing Orders of the Sejm should be adjusted in this respect to the standards laid down in the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Defender petitioned the Marshal of the Sejm in this regard and awaits her reply.

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

The Defender submitted a motion to the Constitutional Tribunal to find the provision of the Petty Offence Code which penalises showing ostentatious disrespect to the Polish Nation, Republic of Poland or its constitutional bodies in public inconsistent with the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms. In the light of the standards laid down in the Constitution and the Convention, legislator's intervention in freedom of speech is justified only when it is necessary to ensure public order and state security. In the Defender's opinion, the legislator interferes in freedom of speech disproportionately. At present, the Defender waits for the Tribunal to set a hearing date for this case.

The Defender submitted a motion to the Constitutional Tribunal to find the provision of the Act on public finance which stipulates that some documents drafted by the auditor during an audit do not constitute public information inconsistent with the Constitution. In the Defender's opinion, if we assume that the purpose of the challenged regulation was to protect the effectiveness and reliability of audit and to protect sensitive data obtained by the auditor, the measure applied by the legislator does not meet the proportionality requirement as it does not result in improved reliability and effectiveness of internal audit. The case concerning the motion is pending before the Constitutional Tribunal.

The Defender also received complaints about refusals to disclose data on reviewers and experts who evaluate applications for funds for science. In the Defender's view, the applicant whose project was reviewed by specific reviewers or experts should have access to a full opinion, including the details of the people who drafted the opinion. The Defender submitted a request to the Minister of Science and Higher Education to present a position on this issue. The Minister ensured that guaranteeing transparency of the review process and preventing irregularities is a priority of the Ministry she is in charge of, but she did not share the Defender's view on the necessity to disclose reviewers' details. The Defender will examine whether the regulations in this area comply with the Constitution.





The Defender petitioned the Minister of Health on restricted access to test questions of medical examinations. In the light of the Act on the profession of a physician and dentist, tests and test questions of the Physicians' Final Examination and Dentists' Final Examination and test questions of the State Specialisation Examination are not disclosed based on the rules laid down in the Act on access to public information. In the opinion of the Defender, these restrictions are not justified due to the constitutionally guaranteed right of citizens to information on the activity of public authorities. The case is pending.

The Defender requested the Supreme Administrative Court to resolve the problem of disclosing contracts for the provision of health care services. There are discrepancies in the case law of administrative courts in this respect. In its resolution, the Supreme Administrative Court shared the Defender's view and concluded that elements of contracts which are not published at the website of the National Health Fund *ex officio* constitute public information and are disclosed according to general rules laid down in the Act on access to public information.

## D. Right to privacy and personal data protection

The standards of ensuring the right to privacy require a change in the regulations on the way daily case lists are prepared, including the publication of personal data of parties to proceedings, witnesses and defendants. In some cases there are important grounds for restricting openness of daily case lists due to the necessity to protect the privacy of individuals. In the Defender's opinion, the issue should be governed by a statutory act. The Defender requested the Minister of Justice to take steps aimed at changing the relevant regulations. In reply, the Minister declared that the Ministry was working on a new Ordinance – Rules concerning the operation of the common courts. It is assumed that, as a rule, daily case lists should state the parties to proceedings, witnesses and expert witnesses, as well as the subject of the case, but in certain categories of cases it would be possible to eliminate some of the data to prevent, *inter alia*, socially undesirable secondary victimisation.

The Defender continued addressing the problem of absence of adequate regulation of CCTV. There are still many areas where CCTV is installed without a statutory basis. In the Defender's view, it is essential to strike balance between security and protection of citizens' privacy, especially in times when modern technologies develop rapidly. The Defender requested the Minister of the Interior to present the status of work on the Act on CCTV and the schedule of actions to be taken in this area. The Minister presented draft assumptions for the Act in January 2014.

The Defender petitioned the Constitutional Tribunal on the functioning of gmina committees for solving alcohol-related problems. In her view, the challenged provisions of the Act on upbringing in sobriety and counteracting alcoholism are for refer-



ence only. When the committees impose an obligation to undergo rehabilitation on people addicted to alcohol, they obtain information covered by the constitutionally protected right to privacy. Yet, the legislator failed to determine the extent of a possible interference of committee members in the right to privacy nor the rules and procedure of gathering and disclosing information on people who abuse alcohol.

The Defender petitioned the Constitutional Tribunal to declare the provisions of the Act on the information system in health care which authorise the Minister of Health to establish medical registers by way of an ordinance inconsistent with the Constitution. A statutory authorisation may not leave too much freedom in shaping the content of an ordinance to the body which issues an implementing act. This results from the need to statutorily regulate restrictions on the right to privacy and informational autonomy of an individual and the right of an individual not to have information which concerns him/her disclosed, unless the obligation results from an act. The case concerning the petition is pending before the Constitutional Tribunal.

The Defender also continued to address the problem of the Educational Information System (EIS) with data on schools and educational establishments, pupils, students, wards and graduates, as well as teachers, tutors and other employees of the education sector. Despite amendment, compliance of the Act on the Educational Information System with the Constitution is still doubtful, primarily because of the wide range of data it covers. The Defender requested the Minister of National Education to present her position on the issue and declare whether the Ministry would re-evaluate the new solutions. In her reply, the Minister of National Education did not share the Defender's concerns on compliance of the said Act with the Constitution. The matter will be monitored by the Defender.

The Defender also submitted a motion to the Constitutional Tribunal to declare certain provisions of the Act on taking, storage and transplantation of cells, tissue and organs inconsistent with the Constitution. She raised concerns as to the provisions which envisage collecting and processing personal data of potential bone marrow donors, such as first and last name, place of birth, address and PESEL number, in the register. In the Defender's view, also the provision of the said Act which says it is mandatory to provide register data to the Minister of Health and the National Transplantation Council is incompatible with the Constitution. The case concerning the motion is pending before the Constitutional Tribunal.

## E. Freedom of assembly

The Defender petitioned the Constitutional Tribunal to declare a number of provisions of the Law on Assemblies incompatible with the Constitution and international conventions. She challenged *inter alia* the provisions that define the number of people considered to form an assembly and the provisions which prevent people with limited



capacity to perform acts in law to organise assemblies. Organisation two or more assemblies in the same place and time is also doubtful from the constitutional point of view. In addition, the appeal procedure provided for by the legislator is ineffective as it does not guarantee that assembly organisers would be issued a final administrative decision prior to the demonstration date. Concerns were also raised with respect to provisions which impose liability for acts of other people and for potential damages on the assembly leader. The case concerning the petition is pending before the Constitutional Tribunal.

## F. Right to education

In its verdict of 8 January 2013, the Constitutional Tribunal ruled that certain provisions of the Act on the education system are inconsistent with the Constitution. The challenged norm was the statutory basis for issuing an ordinance that comprehensively governs enrolment in kindergartens and public schools. Yet, it will take another 12 months for the provisions to become void due to the need to ensure stability and predictability of rules for enrolment in educational establishments. The Defender requested the Minister of National Education for information on the status of work on amending the provisions governing enrolment in kindergartens and schools. The Minister declared that the amendment of the Act on the education system will take into account the verdict of the Constitutional Tribunal on enrolment in public kindergartens, schools and establishments and switching between different school types.

In its verdict of 24 September 2013, the Constitutional Tribunal ruled that certain provisions of the Act on the education system are inconsistent with the Constitution. The challenged provision was the statutory basis for issuing an ordinance on assessing and promoting students and organising tests and examinations. It will take another 18 months for the challenged provisions to become void due to the need to introduce a comprehensive change in the provisions of the Act. The Defender monitors legislative work in this respect.

Complaints from citizens drew the Defender's attention to the change in the provisions governing fees for classes and care in public kindergartens. Pursuant to the Act on the education system, the cost of one hour of care in excess of the core curriculum may not exceed PLN 1. Some parents were concerned that determining a cap on the fees would result in deterioration of the quality of education, restricting the offer of extra classes and elimination of the possibility to organise classes taught by specialists who are not kindergarten employees. The Defender requested the Minister of national Education to take a position on the issue. In her reply, the Minister stated that the purpose of the Act amending the Act on the education system is to eliminate barriers to popularisation of kindergarten education and to ensure that every child has the



possibility to attend classes in a kindergarten regardless of the material status of the family. The Ministry is working to change the core curriculum of kindergarten education to introduce classes in a foreign language.

## G. Voting rights

The Defender addressed the problem of separate electoral districts in the case of local referenda. Organising electoral districts in health care institutions and welfare centres allows people with disabilities, the elderly and those who find it difficult to walk to vote in elections. However in practice, such electoral districts are not always set up. The Act on a local referendum lacks provisions introducing an obligation to set up electoral districts in such places. The Defender requested the Head of the Local Self-Government and Regional Policy Committee of the Sejm to present a position on the issue.

The Defender also notified the Minister of Administration and Digitization that the provisions of the Electoral Code contain a legislative error, which may cause problems in ordering early elections for a voivode, mayor and city president by the Prime Minister. In his reply, the Minister shared the Defender's concerns and declared the Ministry will amend the provision.



## **Major issues concerning penal law**



## A. Right to good legislation

The Defender filed a petition to the Constitutional Tribunal to declare a provision of the Act on copyright and related rights unconstitutional. The legislator, imposing criminal liability for infringement of copyright in the challenged provision, provided an open list of features of a prohibited act which does not allow to explicitly identify the behaviour that will be penalised. In its judgments, the Constitutional Tribunal has repeatedly ruled that the penal law traditionally assumed that prohibition or order subject to a penal sanction must be precisely and accurately formulated. The Constitutional Tribunal is to set the date of the hearing of the petition.

The Defender also petitioned the Minister of Justice about the problem of penalising the manipulation in financial instruments. The provisions of the Act on trading in financial instruments are imprecise, causing the lack of clarity as to prohibited and acceptable operations in the market. In consequence, it is the law enforcement body that defines the features of a prohibited act, while the Polish Financial Supervision Authority has competence to define the provisions on criminal liability. This legal situation is a gross violation of the following principles: *nullum crimen sine lege*, the presumption of innocence and correct legislation. The Defender waits for a reply on this issue.

## B. Lack or limited recourse to law

The Constitutional Tribunal examined the request of the Defender to declare a provision of the Code of Penal Procedure, to the extent in which it does not specify the deadline for filing a subsidiary indictment as the final time limit, to be incompatible with the Constitution. The alleged infringement of the right of recourse to law in this case consisted in the fact that the procedural provisions on subsidiary indictment, by imposing a specific formal requirement in the form of a month-long time limit and severe sanctions for failing to observe the limit, in practice block the access to legal protection authorities, thus making the recourse to law an ostensible right for some applicants. The Tribunal ruled that the said provision of the Code of Penal Procedure in the challenged part was compliant with the Constitution. As regards the remaining part of the provision, the Tribunal discontinued the proceedings.

The Defender declared her participation in the proceedings regarding the constitutional complaint about the right of the injured party to take part in the court sitting deciding on discontinuation of proceedings before the trial. She argued that the provision of the Code of Penal Procedure, to the extent in which it does not provide for the right of the injured party to take part in the court sitting deciding on discontinuation of the proceedings before the trial, is incompatible with the Constitution, since before



the initiation of judicial proceedings at the main trial the injured party has the right to submit a declaration that he/she will act as an auxiliary prosecutor. In practice, the challenged provision, in the analysed part, blocks the access of the injured party to legal protection authorities, thus making the right to court only a sham. The principle of citizens' trust in the state and its laws is also violated. At the moment, the Constitutional Tribunal is to set the hearing date for the case.

In her petition to the Minister of Justice, the Defender pointed to doubts concerning the rights of the person with respect to whom a court, after examining the request of the Head of the Central Anti-Corruption Bureau (CBA), consented to disclose information and data constituting a bank secret. Since the person concerned cannot participate in the court proceedings in the first instance, he/she should have the right to be heard in the appeal proceedings. However, in the current legal situation, the person who is the subject of information covered by bank secrecy does not have a constitutional right to appeal against rulings and decisions issued in the first instance. The provisions of the Act on Central Anti-Corruption Bureau should be amended to ensure that the legal situation of persons with respect to whom the court waived bank secrecy at the request of the CBA meets the constitutional requirements. The Defender awaits reply from the Minister.

## C. Right to defence

The Defender monitors the problem consisting in the lack of access of detainees to legal aid provided *ex officio*. Pursuant to the provisions on penal procedure, the right to *ex officio* legal aid becomes effective when the person concerned becomes a suspect. This means that a detainee in a specific case does not have a possibility to request for a court-appointed defence counsel. The fact that the right to defence counsel is granted to a person subject to procedural detention only as a choice deviates from the principle applied in all rule of law states, according to which legal aid must be provided *ex officio* to poor persons in all factual situations justified by their procedural status. This solution is illusory and violates the constitutional right to defence and the principle of equality before the law. In reply to the petition of the Defender, the Minister of Justice declared that there were no sufficient grounds to state that, under the Polish procedural penal law, a detainee does not have access to legal aid provided *ex officio* or that a detainee cannot efficiently exercise his/her rights. The case is monitored by the Defender.

The Defender submitted a request to the Constitutional Tribunal to declare a provision of the Code of Penal Procedure, to the extent in which it does not provide for the right of a detainee to refuse to make a statement and for the obligation to inform the detainee about such right, to be incompliant with the consti-



tutional right to defence and the presumption of innocence. It infringes the right to defence and the presumption of innocence and, therefore, eliminates them at the early stage of proceedings, thus influencing the entire trial. A detainee who is not a suspect yet and makes a statement during the hearing, without having the right to remain silent, can unintentionally provide evidence that will be later used against him/her. The Constitutional Tribunal is to set the hearing date for the petition.

In her petition to the Minister of Justice, the Defender challenged the constitutionality of the Penal Code regulation to the extent in which it allows to refrain from hearing a convicted person or his/her defence counsel before issuing a ruling ordering the execution of the suspended punishment. The lack of the possibility to appear before the court in person and to make a statement in the case concerning oneself violates the fundamental right of the appellant to defence and to a trial, in particular, if the court decides about the deprivation of liberty. The Minister agreed with the view of the Defender and informed that he had taken steps to put forward a legislative initiative to amend the challenged regulation. The problem will be monitored.

The Defender filed a petition to the Minister of Justice to take a legislative initiative with respect to the lack of regulations on the contact of the persons deprived of liberty with the counsel representing them before the European Court of Human Rights, who is not a legal counsel or a defence counsel. Pursuant to the Rules of Court, the representative acting on behalf of the applicant before the Court may be any other person approved by the President of the Chamber. Therefore, the counsel who is not a defence counsel or a legal counsel and represents the detainee before the Court should have the possibility to contact the person deprived of liberty according to the same procedure as a professional counsel. The Minister decided that the petition of the Defender was justified.

## D. Costs of proceedings

The Defender petitioned the Minister of Justice about one of the provisions of the Petty Offences Procedure Code. The provision stipulates that, when the application is filed by an auxiliary prosecutor and the proceedings are discontinued due to the case falling under the statute of limitations, the costs of the proceedings are obligatorily covered by the auxiliary prosecutor. In the opinion of the Defender, if the proceedings are discontinued due to the case falling under the statute of limitations as a result of excessive length of proceedings conducted by procedural bodies, the charging of the auxiliary prosecutor with the costs of the trial is contrary to the constitutional standards. The Defender awaits reply on the matter.





## E. Excessive length of proceedings

The issue of transit of foreigners suspected of terrorism through the territory of Poland, their detention and mistreatment, is still unexplained. The actions of the Polish authorities in this regard have proved to be insufficient as yet. In her petitions i.a. to the Prosecutor General, the Defender pointed to excessive length of inquiries which may have an adverse impact on the right to fair examination of the case in a reasonable time and, therefore, may result in financial liability of the state. The Defender continues to monitor the issue.

## F. Right to a fair trial

The Defender declared her participation in the proceedings concerning the constitutional complaint and argued that the provision of the Code of Penal Procedure, to the extent in which it disallows the appeal against the ruling issued pursuant to that provision of the Code and referring to an auxiliary prosecutor, is incompliant with the Constitution. The injured party, who is an auxiliary prosecutor in a case, has the right to a trial guaranteed by the Constitution and the ruling of the court based on the provision of the Code of Penal Procedure meets the definition of the “case”, since it is a decision concerning the legal interest of the injured party acting in the capacity of an auxiliary prosecutor. However, as a result of said statutory exclusion, the right to act as an auxiliary prosecutor becomes a sham and the trial becomes unfair. The Constitutional Tribunal is to set the hearing date for the case.

## G. Proceedings in case of penalty notices

The Defender drew attention of the Minister of Justice to the problem of the 180-day time limit, specified in the Petty Offences Procedure Code, during which an officer may impose a fine by a penalty notice for an offence detected using control and measurement equipment or a recording device. In the current legal situation, it is often impossible to meet the obligation imposed by the Road Traffic Law to identify the person to whom the vehicle owner or holder entrusted the vehicle for driving or using at a specific time. The Minister of Justice declared that the time limit challenged by the Defender was rational from the point of view of the authorities conducting the penalty proceedings and the perpetrators of the identified offences. The time limit allows to complete the actions in straightforward cases by imposing a fine by a penalty notice, without the need to involve the courts, and allows the perpetrator to avoid negative consequences stemming from referring the case to court.



The lack of a regulation stipulating that a valid penalty notice may be cancelled, if the Constitutional Tribunal rules that the provision based on which the punishment for an offence was imposed in penalty notice proceedings is incompliant with the Constitution, a ratified international treaty or an act of law, was the reason for the petition filed by the Defender to the Constitutional Tribunal. The Defender is waiting for the Tribunal to set the hearing date.

## H. Personal freedom

The Defender also submitted a request to the Constitutional Tribunal to declare the provision of the Act on safety of mass events, to the extent in which it refers to the regulations of the venue (premises) or the regulation of a mass event, to be unconstitutional. Penal provisions should be defined in an act or at least in an ordinance and not in regulations issued by private entities, as is the case here. The challenged provision is only a reference regulation which does not define acts or negligence for which a citizen may be liable, but refers only to the regulations formulated by a private entity. The Defender is waiting for the Tribunal to set the hearing date.

The Defender continues to monitor the problem of the use of coercive measures by the Police when a defendant or a suspect refuses to undergo obligatory examination or actions defined in the Code of Penal Procedure. In its ruling of 5 March 2013, the Constitutional Tribunal declared unconstitutional some of the provisions of the relevant Ordinance of the Minister of Justice. Since the legislator failed to react appropriately to the ruling of the Constitutional Tribunal, the Defender asked the Marshal of the Sejm to urgently begin work on the relevant amendment to the Code of Penal Procedure. The Marshal of the Sejm informed that the said provision in a new wording had been included in an act which entered into force.

The regulations included in the new Act on coercive measures and firearms, and in particular the fact that an order of the court or a prosecutor may constitute the only basis for using a coercive measure in the form of handcuffs, raised concerns of the Defender. There is no provision which would precisely define the circumstances when a court or a prosecutor may issue an order to use handcuffs. In reply to the petition of the Defender, the Minister of Justice stated that, in his opinion, although a court or a prosecutor may decide to issue an order to use handcuffs, it did not mean that they may do so freely, disregarding the relevant statutory regulations. The Defender will monitor the application of the abovementioned Act.

The reports about the cases when the use of coercive measures by the Police officers results in injuries of the persons subject to those measures raised concerns of the Defender. In her letter to the Commander-in-Chief of the Police, the Defender pointed to the need to equip the Police buildings with CCTV systems and introduce a ban on using any measures in the rooms without such systems. In her petition to the



Prosecutor General, the Defender noted that the European Court of Human Rights ruled on several occasions that the Polish authorities violated the Convention for the Protection of Human Rights and Fundamental Freedoms due to reprehensible behaviour of the Police officers and inappropriate proceedings which did not comply with the principles defined in the case-law of the Court. The Prosecutor General informed that he had forwarded the petition of the Defender to all appellate prosecutors so that they would take into account the comments concerning the inquiries in cases involving the use of violence by the Police officers during the performance of their official duties. The Defender continues monitoring the issue.

## I. Citizens' safety

Referring to the case when the Police officers detained a single mother with minor children and took her to a pre-trial detention centre for the purpose of serving a substitutive sentence of deprivation of liberty, the Defender petitioned the Commander-in-Chief of the Police for introducing relevant amendments to the order on methods and forms of conducting convoys or detentions. The Commander-in-Chief of the Police introduced an amendment to the abovementioned order, stipulating that the Police officers who detain a person being a single parent, the only carer for persons requiring constant care or for animals, must take action to ensure care or custody for those dependent persons or animals.

The Supreme Court adopted a resolution, in which it agreed with the opinion of the Defender expressed in the juridical question, and declared that misdemeanour consisting in transgression of rights or failure to fulfil obligations by a public officer belongs to crimes involving exposure to danger, i.e. result crimes with their effect being a risk of damage to public or private interests.

## J. Road traffic

In her petition to the Constitutional Tribunal, the Defender questioned the constitutionality of the Road Traffic Law provision which authorizes the minister in charge of transport to specify, by ordinance, the method, procedure and technical conditions for collection, processing, accessing and deletion of recorded images and data by the General Inspector of Road Transport, taking into account the documentation and the scope of activities required to conduct proceedings concerning the said offences and the need to protect the recorded data against unauthorised interference and disclosure. The said statutory authorisation refers the issues not covered by the Road Traffic Law to be governed by an ordinance which is incompliant with the Constitution. Moreover, the legislator must act in compliance with the Constitution and cannot



leave the statutory matter to be governed by an ordinance. The Constitutional Tribunal is to set the hearing date for the petition.

The Defender constantly monitors the problem of ensuring adequate assistance to victims of traffic accidents and their families. Therefore, the Defender petitioned the Minister of Justice for introducing a solution consisting in allocating a part of proceeds from fines imposed by penalty notices, which constitute the revenues of the state budget and gmina budgets, to organisations providing assistance to victims of accidents and their families. Unfortunately, the Minister rejected the idea.

The provisions of the Ordinance of the Minister of Infrastructure on detailed technical conditions for road signs and signals, road traffic safety devices and the conditions for their deployment in roads allow to introduce the traffic organisation which *de facto* waives the privilege of parking card holders to ignore some prohibitory traffic signs. The regulations were issued in excess of statutory authorisation and they complement and modify statutory norms in an unacceptable way. The Minister, to whom the said reservations were presented, did not agree with the Defender. Therefore, the Defender intends to request the Constitutional Tribunal to examine the defective provisions of the Ordinance.

In the Defender's opinion, the regulatory impact assessment with regard to observance of human and citizen rights remains unsatisfactory. The Defender analysed the issue based on the Act on drivers. In her petition to the Minister of Transport, Construction and Maritime Economy, the Defender pointed out that such issues as intertemporal regulations and the principle of acquired rights protection were not taken into account during work on the said Act. Negative impacts of the Act were offloaded on citizens on grounds of long *vacatio legis* and the necessity to implement the EU regulations. In another petition to the Minister of Infrastructure and Development, the Defender pointed out that the regulatory impact assessment of the Act on drivers in terms of possible negative social impacts was perfunctory and did not take into account its actual impact. As a result, the citizens face the negative consequences of the regulation. The Defender requested for actions aimed at observing the democratic rule of law standards in the area of legislation.

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

The Defender declared her participation in the proceedings concerning the combined constitutional complaints, arguing that the provision of the Act amending the Act - Code of Penal Procedure and certain other acts, to the extent in which it stipulates that the provisions in the wording defined in the act apply also to enforcement of judgments which became enforceable before the Act's entry into force, is incompliant with the Constitution. The introduction (with retroactive force) of stricter provisions



on adjudicating substitutive penalty instead of deprivation of liberty may also be unconstitutional. The Constitutional Tribunal is to set the hearing date for the cases.

Based on *ex officio* examination of the deaths of persons brought to sober up in rooms for detained persons within the Police organisational units, the Defender concluded that persons, whose state of intoxication is unspecified, should be placed in sobering-up stations. However, since sobering-up stations are closed down and hospitals refuse to admit intoxicated persons, the Police must bear the responsibility for persons brought to sober up. It is a systemic problem, resulting from the lack of a statutory regulation which would impose an obligation on local governments to create sobering-up stations in the cities with the population exceeding 50 000. Sobering-up stations should be modernised and transformed into specialised units, which will serve as a sobering-up station, a therapeutic centre and a family assistance centre. The Defender petitioned the Minister of the Interior about this issue. The Minister agreed with the Defender and presented the results of work of the interministerial team that analysed this issue.

The Defender filed several petitions concerning the fact that the right to visits is not granted to persons deprived of liberty in conformity with the law. The analysis of complaints and visits confirmed that the visits do not take place at a separate table. The Minister of Justice informed that in the majority of penitentiary establishments the visits take place in accordance with the provisions of the Code of Penal Procedure. He also ensured that efforts were made to organise the visits at a separate table. The Defender will continue to monitor the above issue.

The adjustment of Polish penitentiary establishments to the needs of disabled persons was analysed *ex officio*. In the current legal situation, there is no obligation for prisons and pre-trial detention centres to ensure appropriate conditions for disabled inmates, which is contrary to the Convention on the Rights of Persons with Disabilities ratified by Poland. The Defender asked the Minister of Infrastructure and Development to present her position on this issue and currently awaits reply.

The Defender asked the Director General of the Prison Service to take appropriate action to prevent the placement of inmates with physical disabilities, who should have adequate space to move, in overcrowded cells. The Director General of the Prison Service ensured that, despite the existing architectural barriers, there were separate cells for disabled inmates in penitentiary establishments. The Defender continues to monitor the issue.

The examination of individual complaints of prisoners and the visits to penitentiary establishments revealed the problem consisting in a large number of inmates. Inmates cannot use sanitary facilities in cells in private which violates their right to humane treatment and respect for their dignity. In his reply, the Director General of the Prison Service emphasized that the administrations of prisons and pre-trial detention centres undertook a number of actions aimed at introducing solutions allowing to reconcile the obligation to prevent extraordinary incidents, including to ensure



personal safety of inmates in penitentiary establishments, and the need to guarantee intimacy while using sanitary facilities.

Due to irregularities found during the visit to the Central Transfer Point for Persons Convoyed in Stages, the Defender requested the Minister of the Interior to take urgent action in order to guarantee that the rights of inmates are respected. The Minister informed that the Point was modernised in order to improve its operations and the conditions at the Point. The Defender will verify the introduced changes.

## L. Protection of the rights of juveniles

The Defender filed a request to the Constitutional Tribunal to declare that the provisions of the Ordinance on grounds for placing a juvenile staying in juvenile detention centres or juvenile shelters in separate living premises or a transitional room are incompliant with the Act on juvenile delinquency proceedings and the Constitution. The challenged provisions of the Ordinance provide substantive law grounds for restricting the freedom of juveniles by isolating them. Pursuant to the Constitution, deprivation or restriction of liberty may take place only in line with the rules and procedure specified in an act. The case is pending before the Constitutional Tribunal.

During their visits to juvenile detention centres or juvenile shelters, the representatives of the National Preventive Mechanisms identified a problem of strip searches of juveniles. The Ordinance on juvenile detention centres or juvenile shelters includes only a definition of a strip search, but does not specify who and when may carry out such a search. It must be noted that strip search is the most severe interference in the right to privacy and intimacy of the person concerned and, therefore, the authorisation to perform the search cannot be alleged. Furthermore, the issue is covered by an ordinance only which raises concerns about the constitutionality of the solution. Therefore, the issue must urgently be governed by an act.



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



## A. Issues regarding labour law

The Defender has reported the need to amend several acts which provide for labour relations regulations in terms of remuneration for overtime to local governments since 2009. Examining the legal query concerning the above issue, the Constitutional Tribunal ruled that the provision of the Act on local government employees, to the extent that it concerns local government employees who manage a workplace on behalf of the employer, complies with the Constitution and the European Social Charter. The main concern was about the differences in the rights to remuneration for overtime work of local government employees and other employees who do not have the status of local government employees and are subject to the Labour Code. In its ruling on compliance of the challenged provisions with the Constitution, the Constitutional Tribunal also referred to the European Social Charter. The Tribunal emphasised that the provision concerns all employees, with the exception of “special cases.” In the framework of interpretation of the European Social Charter, the Committee of Independent Experts considered depriving employees in managerial positions (mainly due to their usually high remunerations) and public officials of the right to additional remuneration for overtime work compliant with the Charter. When the latter group is concerned, the Committee of Independent Experts emphasised it is inadmissible to deprive all public sector employees of additional remuneration, it should only be the case for “high public officials.” The Defender will consider taking further steps concerning the regulation of overtime work in labour relations regulations.

Acting with respect to complaints, the Defender requested the Minister of Labour and Social Policy for information on the current status of legislative work on the postulated changes in certain acts regulating employment. One of the problems concerned the fact that it is impossible to become eligible to an unemployment benefit for a person who, in the period preceding the date of registering at a labour office, conducted non-agricultural economic activity and did not pay (was unable to pay) Labour Fund contributions. Other problems were: amendment of the Act on the promotion of employment and labour market institutions by introducing extended 12-month period of eligibility to an unemployment benefit for single parents, introduction of a period of unavailability for work (of 8 or 14 weeks) during which an unemployed woman would be able to recuperate after labour and establish stronger emotional bond with her child into the Act on the promotion of employment and labour market institutions, and introduction of changes to the Act on pre-retirement benefits that would result in eligibility of people who help in running non-agricultural economic activity to a pre-retirement benefit. The draft was submitted to the Sejm on 19 November 2013. Other issues were resolved positively by amendments to the Labour Code and certain other acts.





## B. Right to social security

When the application of the Act on bridge pensions is concerned, a problem raised by the Defender concerned the scope of competence of National Labour Inspectorate when examining cases resulting from an application of an employee to be entered into a register of employees who perform work in special conditions or of a special nature. In the Defender's opinion, the absence of supervisory interference of National Labour Inspectorate bodies in entering employees in the register generates the risk of disputes at the stage where employees apply for the right to a bridge pension. The Defender petitioned the Minister of Labour and Social Policy to consider specifying the supervisory competence of the Inspectorate when examining cases resulting from an application of an employee to be entered into a register of employees who perform work in special conditions or of a special nature. The Minister did not share the Defender's view that it is important to amend the Act on bridge pensions with a view to changing the competence of the National Labour Inspectorate. In the Minister's view, the current regulation allows effective execution of the National Labour Inspectorate's tasks in the area of control of the register of employees who perform work in special conditions or of a special nature. The Defender will consider taking further steps in this matter once she receives additional explanations from the Chief Labour Inspector.

The Defender received many complaints about the change in the rules of determining the amount of the universal pension granted to people born after 31 December 1948 who have received early retirement pension. In the light of the Act on retirement pensions and disability pensions from the Social Insurance Fund, people on early retirement pension may apply for a national pension once they reach retirement age. According to new regulations, which entered into force on 1 January 2013, the basis for calculating the national pension is to be decreased by the amounts of early retirement pensions received before reaching national retirement age. In the opinion of the complainants, the new solutions breach a number of constitutional principles, such as the principle of confidence in the state and the law, the principle of protection of acquired rights and the principle of equality. The Defender requested the Minister of Labour and Social Policy to present a position in this regard. The Minister did not share the Defender's concerns as to the extent of application of the provision. He also stated that persons who are granted pension due to reaching national retirement age do not lose the right to the early retirement pension and may choose the one whose amount is higher. The Defender considers taking further steps, especially on the basis of an analysis of the case law in this regard.



## C. Family rights protection

The Defender petitioned the Constitutional Tribunal for declaring some provisions of the Act amending the Act on family benefits and certain other acts incompatible with the constitutional principle of confidence in the state and the law and the principle of protection of acquired rights. Due to the regulations of transitional provisions, eligible persons kept the right to a care benefit in the current amount until 30 June 2013, but decisions on granting the right to a care benefit issued on the basis of current regulations expired by virtue of law after that date. As a result of the change in law, as of 1 July 2013 a considerable group of people receiving the care benefit were no longer eligible to receive it and did not meet the requirements for being granted a new benefit in the form of a special care benefit. Having examined the Defender's petition, the Constitutional Tribunal ruled that the challenged transitional provisions on the care benefit do not comply with the Constitution. The Defender waits for information on the status of legislative work in this regard and the planned date of entry into force of the regulations which implement the verdict of the Constitutional Tribunal from the Minister of Labour and Social Policy.

The Defender received complaints from guardians and parents of disabled children who, as owners of an agricultural holding, found it difficult to become eligible to a care benefit, which is granted pursuant to the Act on family benefits, and an allowance auxiliary to that benefit resulting from the government programme to support some people who receive the care benefit. The doubts resulted from the interpretation of the provision of the Act on family benefits which defines employment and other gainful activity. On 3 April 2013, a Deputies' draft Act amending the Act on family benefits, which concerns unification of the rules of granting a care benefit and special care allowance to people who engage in farming was submitted to the Sejm. The planned amendment will introduce a provision that would eliminate discrepancies in its application and stipulate that non-engagement in farming, confirmed by a relevant declaration, is tantamount to meeting the requirement of resignation from or not taking up employment or other gainful activity. The Defender monitors the legislative process.

The complaints submitted to the Defender revealed a problem which consists in obliging the next of kin of a welfare care homes resident to participate in the costs of their stay. The fees for stay in a welfare care home must be paid by: the welfare care home resident, and in the case of juveniles the statutory representative from the child's income, spouse, descendants before ascendants and the gmina from which the person was referred to the welfare care home. The spouse, descendants, ascendants and the gmina do not have to pay the fees if the care home resident covers the full cost of his/her stay. The Act on social assistance provides for total or partial exemption from the fees, but it does not cover the circumstances revealed by the complaints submitted to the Defender, i.e. instances where the obligation to pay is imposed on individuals who were treated by the resident of the welfare care home in a morally unacceptable way, such as neglecting parental obligations, non-payment of alimony or using violence.



In the Defender's opinion, it is necessary to consider introducing a provision to the Act on social assistance that would allow competent bodies to refrain from charging family members for a resident's stay in a care home in a situation where it would contradict the rules of social coexistence. The Defender petitioned the Minister of Labour and Social Policy to consider introducing adequate amendments to the Act on social assistance. The Minister did not share the Defender's view on the need to amend the Act. The Defender considers submitting another petition to amend the Act on social assistance to the effect of imposing the charging obligation only on the family members who would be under the obligation to pay alimony to the care home resident.

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

The Defender petitioned the Constitutional Tribunal on compliance of the appendices to the Ordinance of the Minister of the Interior concerning the competence and procedure of conduct of physician committees subject to the Minister of the Interior to the extent in which they result in considering a Police officer or a fireman totally incapable of service due to chronic hepatitis and acquired immunodeficiency syndrome (AIDS) regardless of the actual health condition with the Constitution. In its verdict of 10 December 2013, the Constitutional Tribunal ruled that automatic recognition that every HIV carrier or person suffering from acquired immunodeficiency syndrome (AIDS) or chronic hepatitis is totally incapable of serving in the Police or the State Fire Service in any position regardless of the actual health condition is incompatible with the Constitution. In the light of the said verdict, it is necessary to expediently finalise work, carried out in recent years, aimed at comprehensive regulation of the rules on determining the service capacity of uniformed service officers. The Defender is waiting for the Minister of the Interior to take adequate actions in this regard.

The Defender petitioned the Constitutional Tribunal to rule that the provision of the Ordinance of the Council of Ministers on the detailed conditions of increasing the pensions of Police officers, to the extent in which it imposes an obligation on officers to prove the periods of service when their life or health was "directly" at risk, is incompatible with the Act on pensions for Police officers and with the Constitution. Legal norms resulting from the challenged provision – to the extent in which they impose an obligation on officers to prove the periods of service in conditions where their life or health was "directly" at risk – are doubtful from the point of view of compliance with the statutory authorisation. The Council of Ministers was authorised to define specific conditions of increasing pension due to service in conditions of particular risk to life in the Ordinance. Yet, the authorisation did not include the right to replace the statutory phrase "in conditions where their life or health was "directly" at risk" with "direct threat to life and health." The case concerning the petition is pending before the Constitutional Tribunal.



# IV

## Major issues concerning civil law



## A. Right to good legislation

The Defender's initiative was still required with respect to issuing of implementing regulations (ordinances) in excess of statutory authorisation. One example is the setting of minimum rates for actions of solicitors and legal counsels, where the ordinances introduced an additional criterion (not provided for in the act) for differentiation of the rates, i.e. the value of the subject of the case. The structure of statutory authorisations also raises doubts regarding its constitutional character, as in the case of provisions of the Geodetic and Cartographic Law which introduced an obligation to pay fees for provision of data and information from the state geodetic and cartographic resources, but referred all issues related to the amount of the fees to be governed by an ordinance. In the case concerning the settlement of housing contribution reimbursed after the expiry of the cooperative occupancy right, the Constitutional Tribunal, at the request of the Defender, ruled that the statutory authorisation of a housing cooperative to regulate such an important issue, directly relating to propriety rights of not only cooperative members, but also third persons, should not be governed by the statute of the cooperative, but by an act. The Defender also voiced her doubts regarding the legal grounds for using evidence from opinions of family diagnostic and consultation centres in other proceedings (in particular concerning divorce or custody of children) than those conducted pursuant to the Act on juvenile delinquency proceedings.

## B. Right to court in civil proceedings

The Defender petitioned the Minister of Justice about the problem of appropriate execution of information obligations of the court, provided for in the Code of Civil Procedure. The Defender pointed out that written instructions in court letters (in particular instructions concerning deadlines and methods for lodging appeals) are often imprecise or even misleading. This may prevent an inspection of a judgment concerning a given party by a higher instance. The Defender called for regulation and standardisation of the content of instructions issued under the Code of Civil Procedure. Although the Minister of Justice did not find any grounds for initiating legislative changes, he, as part of his administrative supervision over administrative activities of courts, forwarded the proposals of the Defender to presidents of all courts of general jurisdiction, requesting them to analyse the need to include those proposals in the instruction templates used by their courts.

Subsequent petitions of the Defender concerned a number of issues relating to the regulations on court enforcement proceedings. In the opinion of the Defender, the regulations still fail to ensure the right balance between the need to secure justified claims of creditors and the legitimate rights of the debtor, in particular to secure his or her basic maintenance. This is mainly due to the lack of synchronisation of the provi-



sions providing protection under the Code of Civil Procedure and the Banking Law regulations, which was repeatedly criticised by the Defender. The Banking Law provisions allow the bailiff to seize e.g. alimony, social benefits, as well as a part of pension or remuneration exempted from enforcement. A separate problem is the practice followed by banks which automatically block all accounts of the debtor, even without any reasonable need to do so. The rights of persons whose income is irregular and who receive remuneration based on civil law contracts are not protected in any way. The Defender also addressed insufficient protection of the rights of disabled debtors against enforcement. Despite numerous amendments and a number of rulings of the Constitutional Tribunal, certain provisions governing the costs of enforcement proceedings still raise some reservations.

## C. Costs of civil and administrative proceedings

In 2013, the Defender once again addressed the problem consisting in the lack of statutory, comprehensive regulation of free-of-charge legal aid for the poor. The existing system of *ex officio* legal aid in civil matters has been criticized for many years, also by the Defender, for being expensive and ineffective. The Defender has repeatedly called for a systemic regulation of pre-trial assistance and judicial assistance, guaranteeing legal aid for the poorest persons, which is an obligation imposed on Poland by both the Constitution and international commitments. Unfortunately, yet another time the only result of the Defender's efforts was a very general information provided by the Minister of Justice who stated that preliminary work had begun on drawing up draft assumptions for the act and estimating the financial consequences of its entry into force. Similar results were produced by the correspondence of the Defender with the Minister of Finance concerning the introduction of a legal regulation enabling exemption of the poorest persons from the costs of mediation in civil proceedings, in line with the same rules as those applied to exemption from court fees. In the opinion of the Defender, mediation is not adequately appreciated and promoted in Poland, although, as evidenced by experience of other countries, it reduces the number of disputes examined by courts and allows to speed up court proceedings.

The Defender also intervened in cases of excessive court fees which may constitute a real barrier to using the right to a trial guaranteed by the Constitution. The Defender joined two proceedings arising from constitutional complaints about excessive fees (amounting to as much as PLN 5 million) for appeal against a ruling of the National Appeal Chamber at the President of the Public Procurement Office in the case of actions performed during the public contract award proceedings after the opening of bids. The case is pending before the Constitutional Tribunal.

Other persisting problems concerned excessive fees in enforcement proceedings, the lack of explicit regulation allowing to exempt a party of enforcement proceedings



from enforcement costs or the setting of the fees based on the case status and the workload of the judicial enforcement officer.

## D. Family rights protection

An increasingly urgent problem is the discrimination of fathers during determination of marital status rights, most often in cases concerning the determination of the child's parentage, denial of paternity or ineffectiveness of acknowledgment of paternity, as well as the custody of the child. If the interested parties cannot initiate court proceedings on their own, a prosecutor may file a relevant action. The lack of clear, predictable rules governing the evaluation of such requests by the prosecutor may violate human rights, as confirmed by i.a. the case-law of the European Court of Human Rights, also in cases against Poland. The fact that the law does not govern the admission of evidence from genetic tests, which constitute the main evidence in such cases, is an additional problem. The Defender has repeatedly addressed this issue for years. The Defender asked the Prosecutor General to provide information necessary for further analyses. The Defender awaits reply in this regard.

## E. Rights of the disabled

In 2013, the Defender on numerous occasions pointed to the need to adjust obsolete regulations to the current international standards on protection of persons with disabilities, in particular the Convention ratified by Poland. The Civil Code must be amended and the concept of complete and partial legal incapacitation must be changed, including the issue of such persons' representation in legal transactions (also in proceedings before state authorities) which is of key importance for their functioning in the society. Yet another issue is the possibility of such persons to contract a marriage - the current provisions of the Family and Guardianship Code are archaic and, in the opinion of the Defender, discriminatory against persons with disabilities. The Defender also pointed out to the need to enable incapacitated adults to exercise their right to contact with their family and friends. The provisions of the Code of Civil Procedure address only the contact with a minor child.

Another issue of extreme importance is the amendment of the Building Law which still does not impose an obligation to adjust the existing public utility buildings to the needs of persons with disabilities. Inconsistent provisions of the Building Law and the Ordinance on technical conditions to be met by buildings and their location resulted in a situation where it is compliant with the law not to adjust prisons, pre-trial detention centres and similar facilities to the needs of the disabled and of the persons visiting the inmates of such institutions. The Defender also sees the need to introduce ad-





ditional protection of disabled persons who are debtors in enforcement proceedings in order to eliminate the possibility for the bailiff to seize rehabilitation equipment or other devices necessary in everyday life of such debtors or their professional work.

## F. Protection of housing rights of citizens

Despite the fact that the case-law of both international bodies and the Constitutional Tribunal has already defined specific standards of protection against eviction without alternative accommodation being provided, some regulations still fail to meet those standards. The Defender's concerns were raised by different levels of legal protection in this regard, depending on whether the flat from which a given person is to be evicted belongs to public housing resources or is available in the so-called free market. In the first case, when eviction concerns the most vulnerable group of tenants (pregnant women, the unemployed, bedridden persons, custodians of minor children), the court issuing an order for eviction must rule that the evicted person has the right to a council flat. Such an obligation does not exist in the case of tenants of flats that are not a part of public housing resources. The Minister of Justice did not agree with the Defender, but the issue is being further analysed and the Defender may take further action in this regard.

In her petition to the Prime Minister, the Defender pointed to the lack of protection against eviction without alternative accommodation being provided, when eviction is carried out in line with administrative enforcement procedure, contrary to the situation when it takes place in line with enforcement procedure governed by the Code of Civil Procedure. According to the Defender, a regulation should be introduced to the Act on enforcement proceedings in general administration to prevent eviction without providing any accommodation to the evicted persons. The issue will be monitored in view of the planned action of the government.

Another concern of the Defender is the problem of protecting persons who must leave the dwelling along with the debtor, based on a valid decision on adjudication of property which ends enforcement proceedings in the form of auction sale of the property, against eviction without alternative accommodation being provided. Pursuant to the amended provisions of the Code of Civil Procedure, such a decision allows to force not only the debtor, but also other persons living in a given dwelling, to leave the sold property. However, in the course enforcement proceedings against the debtor the court does not analyse the rights of other persons to a council flat and cannot rule on this matter. Although the Minister of Justice did not share the concerns of the Defender, the issue will be monitored based on courts' decisions.

Doubts persist with regard to legality of the transfer of the ownership right to a dwelling built using a loan granted by Bank Gospodarstwa Krajowego from the funds of the National Housing Fund to persons who have cooperative occupancy



rights to such dwellings. The doubts are confirmed by the current practice of notaries who refuse to draw up acts documenting agreements on ownership transfer in such situations. The Minister of Infrastructure and Development agreed with the Defender that statutory changes were needed to eliminate the existing doubts concerning the legality of lease purchase of such dwellings.

The Defender was also concerned about the situation arising from the resolution of the Supreme Court, pursuant to which a land and mortgage register cannot be established for cooperative ownership right to a dwelling when the legal status of the property remains undetermined. The practice of housing cooperatives, which granted the rights to dwellings in buildings on land with respect to which they did not have ownership right or perpetual usufruct right, has been accepted for many years. The opinion of the Supreme Court that all persons entitled only have expectancy of obtaining cooperative ownership right to a dwelling resulted in total paralysis of transactions relating to such rights to apartments, also when the land and mortgage register had been established in the past. This situation requires urgent intervention of the legislator. The matter will be monitored by the Defender.

The provisions of the Act on real estate management, specifying the rules of return of the discount on the purchase price of council housing, must also be amended. The provisions have far-reaching, adverse legal consequences for citizens and are not sufficiently precise and detailed. As a result, the interpretation of those regulations may vary, in all conformity with the law. In consequence, even the persons who exercised due diligence in establishing their legal situation and obligations may be surprised to find that they must return the discount obtained years ago, due to the different interpretation of the same legal regulation by the seller of the dwelling with a discount (most often the gmina). The Minister of Transport, Construction and Maritime Economy agreed with the Defender that work should be initiated to amend the Act on real estate management.

## **G. Property law protection and real estate management**

In 2013, the Defender repeatedly addressed the problem consisting in the lack of balance between the protection of owners' rights and the need to protect the public interest. The recurring problem concerns compensations for owners of real estate where investment is impossible due to old land management plans which allocated the said real estate for public purposes which were not fulfilled. Since in 2012 the Constitutional Tribunal discontinued the proceedings initiated due to a constitutional complaint joined by the Defender, the Defender submitted an abstract request regarding the matter. The case is pending before the Constitutional Tribunal.



The Defender also filed a petition to the Constitutional Tribunal arguing that the period of limitation of claims arising from unfounded deprivation of liberty (unjust conviction, temporary arrest or detention) was too short. In the opinion of the Defender, the challenged regulation is incompliant with the Constitution, since it does not guarantee equal protection of the property law of an individual to receive compensation for unlawful actions of public authorities. The case is pending before the Constitutional Tribunal.

Other problems monitored by the Defender included insufficient protection of the rights of owners of facilities entered into gmina register of historical buildings; excessive severity of legalisation fees imposed for land use violation; unjust deprivation of the right to equivalent of some forest plantation owners (the relevant petition was filed to the Constitutional Tribunal). Numerous petitions of the Defender concerned the problems concerning fees for perpetual usufruct, including the related discounts. The Defender pointed to internal inconsistency of both procedural and substantive law provisions. Urgent legislative intervention is needed to improve the coherence of the current regulations.

The Defender also pointed out to the lack of statutory obligation to return real estate seized for public purposes by the State Treasury or local government units pursuant to the decision approving the division of the real estate at the request of the owner, in line with the procedure specified in the Act on real estate management. The Defender joined the proceedings initiated as a result of the relevant constitutional complaint, arguing that the situation contradicts the constitutional principle of equal protection of property rights. Moreover, the fact that such real estate cannot be returned, if it was not used for public purposes that justified the expropriation, breaches the constitutional guarantees which allow for expropriation “only for public purposes”. The case is pending before the Constitutional Tribunal.

## H. Environmental protection

Numerous complaints to the Defender concern environmental protection issues and pending proceedings, often related to ongoing private or public infrastructural investments. In the opinion of the Defender, the current regulations do not ensure sufficient protection of the rights of persons affected by specific investments, structures or facilities due to the lack of precise technical standards. The problem concerns, among others, the location of wind power stations, in particular those with higher ratings, since there is no prohibition on locating them in the vicinity of residential buildings. The Minister of Transport, Construction and Maritime Economy informed that the rules of location of all investments (also those related to renewable energy sources) would be the subject of detailed analyses by the Building Law Codification



Committee which was to develop statutory provisions governing comprehensively the entire investment and construction process. The Defender plans further action in this regard.

The lack of technical standards causes problems also when e.g. aggressive light advertisements are located in the vicinity of residential buildings, but also in the roadway or its surroundings. The Minister of Transport, Construction and Maritime Economy agreed with the Defender that regulations should be adopted to clearly specify the rules of locating advertising screens out of the roadway. The matter will be monitored by the Defender.

Another problem addressed by the Defender concerns the formulation of procedural rights of the participants in so-called environmental proceedings, i.e. restriction of the rights of social organisations in proceedings concerning the water law (which may also violate international conventions) or the lack of appeal against the decisions of environmental protection authorities issuing opinions about the compliance of specific investments with environmental regulations and requirements. The Defender continues to monitor those issues and will monitor legislative work in this regard.



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



## A. Right to good legislation

In her petition to the Minister of Administration and Digitization, the Defender highlighted the need to amend Administrative Law to unify administrative sanctions by introducing unified general rules on imposing administrative fines by public authorities into the Polish law. The Minister shared the Defender's reservations. The procedure of preparing the amendment in this regard needs to be considered.

The Defender requested the Constitutional Tribunal to declare a provision of the Pharmaceutical Law, to the extent in which it orders to charge a fee for a change in the permit to run a pharmacy in a situation where the change results from actions of public authorities, inconsistent with the constitutional principle of citizens' confidence in the state and the law. The date of the hearing of the case is to be set by the Constitutional Tribunal.

In her motion to the Constitutional Tribunal, the Defender questioned the Ordinance of the Minister of Treasury that concerns the rules and procedure of selecting candidates for supervisory boards of commercial companies with the participation of the State Treasury, which has been issued without a legal basis and governs the rights and obligations of citizens by entering an area of regulation reserved for general provisions. The date of the hearing of the case is to be set by the Constitutional Tribunal.

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

The Defender joined the proceedings initiated by a constitutional complaint of a veterinarian on whom a disciplinary penalty of a reprimand was inflicted. The complaint concerned provisions stipulating the procedure in disciplinary proceedings against veterinarians, which did not provide for the possibility to appeal against a disciplinary penalty. The Constitutional Tribunal acknowledged the complaint.

In her petition to the Head of the Chancellery of the Prime Minister, the Defender addressed the processing fee charged on issuing a copy of a verdict with a justification in court and administrative cases. The Defender challenged the fact that the fee amount is fixed although, as a rule, processing fees should depend on the number of pages of the issued document. The explanations provided by the Minister of Justice said that the nature of the fee for a copy of a verdict with a justification prevents making it depend on the number of pages.

The Defender requested the Supreme Administrative Court to resolve whether an administrative court which rules on granting temporary protection, provided for in the Law on Proceedings before Administrative Courts, must take into account the evi-



dence in case files apart from the application of the applicant. In the Defender's view, it is justified to claim that an administrative court should rule on the basis of both the applicant's application and the evidence in case files to see whether there are grounds to grant temporary protection.

## C. Protection of consumer rights

Major problems faced by bank customers consist in carelessness and unreliability of customer service, aggressive sales policy of banks and non-provision of reliable information on the essential characteristics of products offered to customers. The need to make bank establishments and branches friendly to seniors and the disabled is still pressing. It is also necessary to unify the procedure in the case of consumer's death and to induce banks to be more flexible in their approach to customers who lose financial liquidity. The protection by limitation of enforcement, which is only illusory, was also emphasised. Unification of complaint procedures would also help bank customers. The Polish Bank Association declared that the remarks on good practices of banks towards their customers will be taken into account in further actions taken by the Association.

The Defender addressed actions aimed at ensuring the disabled equal access to electronic banking. In his reply, the President of the Polish Bank Association stated that the banks which are Members of the Association have already received "Good practices in servicing persons with disabilities by banks" which provide guidelines to enable functional and effective use and improvement of existing mechanisms. It is planned that the guidelines would be expanded and updated on an ongoing basis.

The Defender petitioned the Minister of Administration and Digitization on the problem of signing when collecting letters or parcels by people with physical disabilities who are unable to affix a signature. The Minister explained he was planning to introduce a solution to allow people who cannot affix a signature to collect letters or parcels with the participation of a postman. Also in his reply, the Government Plenipotentiary for Disabled People confirmed the need for legislative changes.

In reply to the Defender's request for information on the status of legislative work on the draft governing the so-called reverse mortgage, the Minister of the Economy presented the status of work on the draft which concerns the so-called life annuity (sales model) as a supplement to the draft assumptions for the draft Act on the reverse mortgage loan prepared by the Ministry of Finance. The draft has been presented to the Council of Ministers for approval.

The Defender drew the attention of the President of the Office of Competition and Consumer Protection and of the Inspector General for Personal Data Protection to the provisions of agreements which require consumers to declare consent to



publishing the personal data they make available to companies in press, media and in the place selected by the company, to notifying family and household members if a consumer breaches the agreement, and which allow charging the debtor with an additional amount of money when a debt collector contacts the debtor personally. The President of the Office of Competition and Consumer Protection stated he has instituted proceedings on practices which violate collective interests of consumers. The Defender considers petitioning the Inspector General for Personal Data Protection to institute proceedings.

The Defender requested the Constitutional Tribunal to declare the provisions which penalise participation in gambling organised without a concession or permit in a twofold way.

## D. Public levies

The Defender addressed a legal query on taxation of employee income from participation in integration events organised by the employer with personal income tax to the Supreme Administrative Court. In the Defender's opinion, income from benefits in kind and other free benefits only emerge if these benefits are received by the recipient. In a situation where the value of provided benefits cannot be considered received benefits, it is impossible to determine the amount of employee income. The Supreme Administrative Court suspended the proceedings until the Constitutional Tribunal answers the legal query on compliance of tax regulations in this respect with the Constitution.

The Defender also requested the Supreme Administrative Court to resolve if, in the legal status in force since 1 April 2009, when an act is performed in a way resulting in an emergence of a tax obligation pursuant to the Act on the goods and services tax, which consists in making a non-monetary contribution other than an enterprise or an organised part thereof to a limited liability company, the basis of taxation of the contribution, pursuant to the said Act, is the nominal value of shares which constitutes the due amount or the market value of goods or services reduced by tax. In the Defender's opinion, in the case of a non-monetary contribution to a limited liability company, the basis for its taxation is the market value of goods or services reduced by tax.

An analysis of complaints in the area of tax law, opinions of representatives of the Public Finance Committee, tax law doctrine and opinions of practitioners expressed during meetings results in a conclusion that it is necessary to order tax law provisions which, due to frequent small amendments, are unclear and do not match the current economic situation. Therefore, the Defender requested the President of the Republic of Poland to consider establishing a Tax Law Codification Committee at the Chancellery of the President of the Republic of Poland.





In her letter to the Minister of Finance, the Defender provided examples of specific legal solutions which prove that the new tax law provisions are doubtful not only as to their compliance with the Constitution, but are also frequently inconsistent and mutually exclusive with provisions of other acts. In his reply, the Minister did not consider the arguments valid. The Defender considers referring some of the provisions to the Constitutional Tribunal.

Current tax law provisions are not clear and unambiguous enough to allow taxpayers to interpret them on their own to know how to pay taxes. In the Defender's view, tax interpretations are a symbol of legislative failure and an expression of normative conviction that the current tax law is unclear and requires complicated interpretation effort. The Minister of Finance did not agree with this position. The Defender monitors amendments to particular legal acts with a view to potential further interventions.

In her petition to the Minister of Finance, the Defender stated that some of the acts on the relations of the State with certain denominations do not allow their followers to deduct expenditure for such activity from the taxation base. The Defender also highlighted the problem of regulating the tax relief which consists in deducting expenditure for church charity and care activity by a number of legal acts, which does not contribute to fostering the principle of protecting citizens' confidence in the state and its law. In his reply, the Minister explained that not all churches were interested in introducing such a relief, and as some churches were, work on amending relevant church-related acts is underway.

The Defender petitioned the Minister of Finance on the tax situation of heirs of securities, shares in commercial companies, participation units, investment certificates, etc. When paying tax on income from their sale, taxpayers may not reduce the taxation basis by the costs incurred by the testator to acquire the above assets and may not calculate deductible expenses according to the method valid for free takeover of objects or rights. The Minister of Finance informed about the intended amendments to the Act on personal income tax that provide personal income taxpayers with a possibility to take into account expenditure incurred by testators. The amendments entered into force as of 1 January 2014.

Another problem addressed in petitions to the Minister of Finance was publishing double taxation treaties during a tax year when the treaties are already in force. The Defender requested information on actions taken to eliminate situations in which such treaties are published without adequate *vacatio legis*. The Minister declared that the rule for double taxation treaties is that they enter into force after notification of information on meeting the requirements of national law, essential for entry into force of a treaty, by each of the parties thereto. The proposal of the Ministry to include provisions introducing adequate *vacatio legis* clauses in such treaties is not always approved by treaty partners. The delays in treaty publishing also result from the procedure of their publishing resulting from the Constitution and the Act on publishing normative acts and certain other legal acts.



The Defender notified the Minister of Finance of the problem which consists in improper application of the Act on personal income tax by tax authorities when a person sells real property after the death of his/her spouse, e.g. by way of a life annuity agreement, before five years from the end of the year in which the spouse died, if earlier on the real property was a part of joint property of the spouses. As the Minister did not consider the doubts valid, the Defender considers joining one of the proceedings before the Supreme Administrative Court in a case where tax authorities issued a decision to the detriment of taxpayers.

Analysis of provisions concerning taxation of income of life annuitants from life annuity agreements with personal income tax revealed problems with self-calculation of tax faced by seniors (unclear and ambiguous regulations). The Defender requested the Minister of Finance to consider whether such an important social objective as provision of basic subsistence means to seniors requires covering income from life annuity agreements with tax exemption. The Minister did not subscribe to this view. The Defender considers referring the provisions to the Constitutional Tribunal.

The Defender referred the problem of taxation of individuals whose bank remitted debt and/or interest on a loan with personal income tax. The Minister did not agree with the opinion that it is necessary to introduce a tax exemption on income from remission of loan liabilities by a bank, stating that in justified cases taxpayers may apply for relief in repayment of tax liabilities. At present, the Defender gathers statistical data on the problem.

The civil law nature of interest paid to citizens pursuant to the Civil Code is, in the opinion of the Defender, an argument in favour of covering such interest with tax exemption. It can be assumed that the essence of such interest is that, in the majority of cases, they do not enrich the beneficiary in any way, but remedy his/her loss. In his reply, the Minister of Finance concluded there are no grounds to introduce such an exemption.

The Defender requested the Supreme Administrative Court to resolve whether revenue from sale of real property, a part thereof or a share in real property used for the needs of economic activity, if the real property has not been included in the register of fixed assets and intangible assets and does not constitute an asset component as laid down in the Act on personal income tax, constitutes revenue from economic activity within the meaning of the Act. In the Defender's opinion, in the legal status in force since 1 January 2004, the sale of real property, a part thereof or a share in real property used for the needs of economic activity, if the real property has not been included in the register of fixed assets and intangible assets (and does not constitute an asset component as laid down in the said Act) does not constitute revenue from economic activity.

The rules on determining the revenue which is not substantiated by declared sources or derived from unrevealed sources are doubtful from the constitutional point of view. In the justification of its verdict of 18 July 2013, the Constitutional Tribunal



stated that the current wording of the provision of the Act on personal income tax (in force since 1 January 2007) has the same flaws as the provision considered inconsistent with the Constitution by that verdict. In reply to the Defender's petition, the Minister of Finance declared, *inter alia*, that analytical and legislative work is underway to prepare a draft amendment of the regulations in that area.

The Defender petitioned the Minister of Finance on the application of the VAT exemption for health care services that serve health prevention, rescuing, restoring and improvement as well as supplies of goods and provision of services closely related to these health care services, rendered by medical entities in the framework of medical activity. Analysis of individual interpretations shows that in the case of accommodation and catering services provided by hospitals to people who accompany hospitalised patients, exemption applies only when it is a doctor's order that the presence of these accompanying persons is essential for therapeutic reasons, although such a requirement is absent from the Act on VAT. The Minister of Finance decided that such an interpretation complies with relevant regulations of the European Union. The matter is monitored by the Defender.

In her petitions to the Chairman of the National Broadcasting Council and the Minister of Culture and National Heritage, the Defender presented *inter alia* her doubts as to the rules of remitting subscription fees and the need to consider withholding or suspending, in justified cases, actions aimed at obligatory enforcement of subscription fee arrears. The reply of the National Broadcasting Council confirms that public authorities are inefficient in examining applications for remitting subscription fee arrears or repayment in instalments.

The provisions of the Act on the register of taxable persons and taxpayers allow, in the Defender's view, to start a procedure of supplementing forms solely in the case of identification notifications, thus omitting the data update process altogether. The Minister of Finance agreed with the Defender's position and declared that appropriate legislative changes will be introduced. The Defender monitors whether the draft would actually be prepared and passed.

## E. Economic activity

Due to absence of statutory criteria to be applied by a gmina council when passing a resolution on opening dates and times of retail, catering and service establishments, the criteria are defined at the level of a resolution. As a result, administrative courts have no clear model of control of gmina resolution-passing activity. In the Defender's view, the situation threatens the freedom of economic activity inscribed in the Constitution. The Defender filed an application to the Constitutional Tribunal on the issue.

The definition of a "creditor" provided for in the Act on provision of economic information and exchanging economic information differentiates the obligation to



obtain an enforcement order for natural persons and other entities, which is doubtful from the constitutional point of view. The Defender intends to file another request for a comprehensive presentation of the reasons for different treatment of creditors and for provision of statistical data on the matter, as the previous reply from the Minister of Economy was not exhaustive.

In the Defender's opinion, the possibility of entering information on disputed liabilities is contrary to the *ratio legis* of the Act, which was intended to inform business transaction participants on unreliable debtors. In practice, the current statutory regulations create room for abuse. The Defender demanded to know the reasons for which the legislator allowed publication of information on disputed liabilities, which may be the subject of proceedings, by economic information bureaux and so-called debt markets. In his reply, the Minister of Economy pointed to the statutory obligation to publish information on challenging liability by the debtor. As to on-line debt exchanges, he emphasised that disclosing details of debtors by debt enforcement companies is subject to the Act on personal data protection, the Civil Code and the regulations on combating unfair competition. The Minister ensured that the Defender's comments and doubts will be analysed in the framework of the evaluation of the Act on provision of economic information and exchanging economic information.

The Defender also requested the Minister of Economy to explain the reasons for which the legislator decided to give privileges to creditors and economic information bureaux by granting them sole right to remove commercial information from the register and deprive debtors of such right in the Act on provision of economic information and exchanging economic information. In the opinion of the Minister, debtors are not deprived of statutory instruments aimed at influencing the content of published economic information, even if regulations do not furnish them with a direct right to remove data from such registers. The Ministry, however, agreed there was a need to specify some regulations in the area addressed by the Defender.

In her petition to the Minister of Administration and Digitization, the Defender presented her remarks on the regulation which introduced the possibility for the President of the Office of Electronic Communications (UKE) to issue a decision that defines the terms of access to real property and telecommunications infrastructure by telecommunications enterprises. In the Defender's opinion, the Act does not specifically state how the President of UKE would determine the presumption for her actions and does not define the way how she would determine the terms of settlement for such access. In his reply, the Minister stated that the current solution is aimed at promoting the co-use of telecommunications infrastructure and thus at enhancing the efficiency of telecommunications investments by preventing multiplication of such infrastructure, and the decision in question is of discretionary nature.

The Defender had doubts as to the obligation to become a member of the Polish Insurance Association. The nature of obligatory membership may breach the regulation which concerns other types of self-government organisations and by interfering



with the freedom to take up economic activity it may also violate the provisions of the Constitution which provide for freedom of economic activity and define the admitted restrictions on such freedom by an ordinary legislator. The current regulation may also violate the constitutional freedom of association. The Defender requested the Minister of Finance to present his position on the *ratio legis* of the provisions which stipulate this obligation.

## F. Health care system

Upon a motion from the Defender, the Supreme Administrative Court passed a resolution in which it shared the Defender's opinion and explained that confirmation of referral to spa treatment is an act in the scope of public administration subject to the cognition of an administrative court, whereas refusal to confirm referral to spa treatment should take the form of an administrative decision.

The Defender petitioned the Minister of Health on her doubts as to the wording and application of the provisions of the Act on medical devices which concern the obligation to notify medical devices. The Minister declared that a legislative process was initiated to introduce the necessary changes, such as eliminating the obligation to provide a description of custom-made medical devices in English.

The Defender petitioned the President of the National Health Fund on press reports concerning non-observance of statutory rights of war and military disabled persons and veterans to use health care services out of turn. In his reply, the President of the National Health Fund declared that he sent communications to entities which pursue medical activity – and are health service providers – and to pharmacies to remind them that the above groups of patients have the right to use health care services and pharmaceutical services provided by pharmacies out of turn, when they produce a document to confirm such right. Health service providers were obliged to display information to that effect in visible places, e.g. on notice boards in every place where such services are rendered.

Referring to a petition from 2007, the Defender requested the Minister of Health to streamline actions aimed at ensuring transparent rules of access of patients to orthopaedic items and aids. In order to do that, an Ordinance of the Minister of Health would have to be amended by adjusting it to the Act on health care services financed from public funds. There are also doubts as to actual rights in respect of supplying medical devices that are orthopaedic items and aids to patients. A list of orthopaedic items and aids determined by the Ordinance on a detailed list of medical devices that are orthopaedic items and aids does not include a full range of items and aids listed in the Ordinance defining price limits.

The Defender petitioned the Minister of Health moved by dramatic events which prove irregularities in medical rescue services, night and holiday medical care and



paediatric health care. In reply, the Minister assured he was monitoring the situation in the health care system on an ongoing basis and responded to every report on possible inadequate provision of health care services. The Ministry is working on a draft amendment to the Act on State Medical Rescue. Actions are also taken aimed at increasing the number of units which train doctors with a view to increasing the number of places in training groups. In addition, every year the Ministry tries to secure considerable funds for employment of doctors as residents. Adding paediatrics to the list of priority fields is expected to contribute to an increase in interest of physicians to take up specialisation in this field thanks to the possibility of receiving higher basic monthly remuneration of a resident who is in the process of specialisation in this field.

The Defender requested the Minister of Health to tighten supervision of aid to the injured in exercising their right to medical care financed from public funds. In addition, the Defender presented her doubts as to the legal structure from the Act on health care services financed from public funds which makes the right of Polish citizens to such services dependent on their financial situation. The solution gives rise to doubts as to its compliance with the Constitution.

The institution of so-called obligatory treatment has been ineffective for years. Yet, despite a negative opinion on the current obligatory treatment model, concrete changes do not follow. The Minister of Health informed that the draft proposal for an amendment of the Act on upbringing in sobriety and preventing alcoholism related, *inter alia*, to eliminating the institution of commitment to undergo rehabilitation. He emphasised that the proposal in the draft envisaged extending the tasks of gmina committees for solving alcohol-related problems. He provided the Defender with information on similar regulations in Spain and Great Britain.

Introduction of the National Rare Disease Programme and of information policy on rare diseases is a priority. At present, one of the fundamental barriers is unavailability of information, primarily on where to seek diagnostics, treatment, psychological and legal support. The Minister of Health explained that a priority of health care policy in the area of rare diseases is to ensure access to pharmacological treatment to patients. Therapies for diseases considered ultra-rare have been financed since 2009 from public funds under drug distribution programmes recommended by the Team for rare Diseases. Another task is to prepare a National Rare Disease Plan.

The fact that there are limits on services in the area of cancer treatment may prove that cancer treatment is not considered a life-saving treatment. There are no legal instruments allowing to settle services provided in excess of the limit. It is necessary to extend control by the Ministry of Health. In response to the Defender's inquiry, the Minister of Health declared that the value of contracts with health service providers in the field of oncology has been increasing on an annual basis. A decision on lifting limits on such services should be preceded by detailed analyses of possible effects. The



Minister of Health requested the President of the National Health Fund to carry out such an analysis. Actions aimed at increasing the number of inspections will be taken as possible.

The deadlines for entry into force of decisions, defined by the Minister of Health, are not kept in practice. If patients spend their own money for drugs for which public authorities have not carried out the necessary procedures to ensure their actual availability in the framework of reimbursement, they are refused to be reimbursed. The Minister of Health explained that the remarks will be analysed again during work on amendment of the Act on reimbursement.

The Defender addressed the implementation of objectives of the National Mental Health Protection Programme, including the establishment of mental health centres, again. Earlier exchange of correspondence with the Ministry of Health yielded a conclusion that it is necessary to introduce legislative changes. Unfortunately, months have passed without information on progress in putting the idea of establishment of mental health centres to practice, and despite earlier assurances of the Minister, amendments of the law in this field do not include this particular issue. Whether the tasks and objectives planned in the Programme for 2011-2015 would actually be implemented is a matter of particular concern.

In her petition to the Minister of Justice, the Defender pointed out the need to take legislative actions aimed at changing the regulation on the rights and obligations of persons placed in mental hospitals as a precaution measure. In his reply, the Minister agreed it is necessary to introduce legal solutions of a statutory rank to unambiguously resolve the possibility of temporary release of such patients from a hospital.

The Defender petitioned the Minister of Health on non-execution of an authorisation provided for in the Act on mental health protection despite elapse of the deadline to issue a new implementing act defined by the legislator. In his reply, the Minister explained that the delays resulted from numerous remarks submitted in the process of consultations and the extent of changes introduced on their basis made it necessary to refer the draft Act for interministerial and public consultations again.

The problem reported in the petition to the President of the National Health Fund was referring spouses (and relatives) to spa treatment together, frequently mentioned in complaints to the Defender by insured persons, usually seniors. The applications concerns being referred to the same spa treatment establishment for the same period, and accommodation in the establishment. The Defender requested the President of the National Health Fund to consider taking the above postulates of insured persons into account and to introduce relevant legislative changes to orders of the President in this regard.

The Defender addressed the problem of treatment or diagnostic tests outside Poland, consented to pursuant to the regulations on coordination and treatment or diagnostic tests which are not available in Poland, to the Minister of Health. The Minister of Health explained that in some cases reimbursement of the costs of such services is





possible if the patient even initiates the procedure of applying for consent. Yet, there are no grounds for introducing a provision that would provide for the possibility to obtain reimbursement of full costs of treatment abroad if the patient does not apply for consent of the President of the National Health Fund. It could constitute an incentive to evade the law.

The main objective of the Directive on the application of patients' rights in cross-border healthcare is to ensure free movement of health care services in the EU, i.e. to create a transparent legal framework for using health care services in other Member States, with the possibility of reimbursement of such services' costs from the public health insurance system to all patients. The Defender requested the Minister of Health to state the planned date of Directive implementation. In the Ministry's view, the Directive will not be applied in Poland until the Act implementing it enters into force. Patients who will use cross-border health care services until that time risk a dispute with the National Health Fund for reimbursement of their costs. The Ministry declared that work on the draft Act implementing the said Directive is at the final stage.

## G. Protection of the rights of the disabled

The Defender petitioned the Constitutional Tribunal on obliging the disabled to provide a car for the state practical drivers' license examination. In the Defender's opinion, the challenged regulation violates the constitutional principle of equality and non-discrimination of the disabled, the principle of social justice and the obligation to introduce provisions which ensure effective support to the disabled in various areas of social life, and it breaches the Convention on the Rights of Persons with Disabilities.

In the petition to the Minister of Transport, Construction and Maritime Economy the Defender pointed out that the current rules of driver's license examinations for the disabled are doubtful from the point of view of the constitutional principle of equality and materialisation of social justice. The Minister stated there were no grounds for introducing changes to relevant provisions to allow the presence of sign language interpreters during the theoretical part of the driver's license examination. As to the financing of presence of sign language interpreters to assist deaf and hearing-disabled persons during driver's license examinations, he declared that the Ministry had requested the Ministry of Labour and Social Policy for information whether it was possible to obtain funds for ensuring sign language interpreters to assist deaf and hearing-disabled persons taking driver's license examinations. In its reply, the Ministry of Labour and Social Policy explained that disabled persons may apply for funding of sign interpreter or guide interpreter services from the State Fund for Rehabilitation of Disabled Persons (PFRON).





The Defender petitioned the Government Plenipotentiary for Disabled People and the Minister of Labour and Social Policy on the procedure for declaring disability and related problems with obtaining benefits by the disabled, stating that the current regulations are doubtful from the constitutional point of view. Their replies did not dispel the Defender's doubts.

## H. Protection of rights of foreign nationals

The Defender's interests continued to focus on analysis of legal provisions which govern the rules of foreigners' stay in guarded centres for foreigners run by the Border Guard. The Defender criticised, *inter alia*, the regime in the centres and infrastructure typical of a prison. She also acted to impose an absolute ban on placing juveniles in guarded centres for foreigners. Not all her postulates have been granted. So far, the ban on detention of juveniles has not been introduced. The Border Guard implemented new *internal regulations* in the centres which considerably mitigated the strict discipline.

The Constitutional Tribunal granted the petition of the Defender and ruled that the provision which governs the rules of body search of foreigners placed in detention centres run by the Border Guard is inconsistent with the Constitution.

The Defender evaluated the 2012 abolition for foreigners staying in Poland illegally. Her view of the campaign was positive as it turned out an effective tool to prevent exclusion of this group of foreigners.

The study of juvenile foreigners' access to education in Poland was completed. Conclusions and recommendations were presented in the Human Rights Defender's report entitled *Execution of the Right of Juvenile Foreigners to Education*.

The Defender was alarmed by information on a record high number of applications for the refugee status submitted to the Office for foreigners in 2013. In her petition to the Head of the Office for Foreigners, the Defender expressed, *inter alia*, her concern whether the Office was prepared to accept and process such a high number of applications.

## I. Protection of the rights of national and ethnic minorities

The Defender examined the situation of a part of the Roma community in Poland. Representatives of the Defender visited, *inter alia*, selected Roma settlements in Małopolskie Voivodeship to collect information on actions taken by local authorities to improve the living conditions in those settlements.



The issue of creating separate Roma forms in public schools reappeared. One of Poznań-based primary schools came up with the idea to set up such a form. The Defender criticised the idea. In a letter to education authorities, the Defender reminded that it is their duty to ensure adequate and equal access to education, while forms for the Roma only would surely enhance marginalisation of these students.

The Defender undertook an intervention on acts of vandalism and aggression against the Roma community in Andrychów and Łódź as well as destruction of boards with place names in Polish and Lithuanian in Puńsk gmina.

Acting on a complaint from the Kashubian-Pomeranian Association, the Defender requested the Chairman of the National Broadcasting Council to explain why there is no programme for the Kashubian-speaking community. The Chairman declared he would monitor all the programmes intended for this community.

# VI

## **Major issues relating to the equal treatment principle and to counteracting discrimination**



The fundamental reason behind adopting the Act on the implementation of certain regulations of the European Union in the area of equal treatment was to define the ways of counteracting discrimination on grounds of sex, race, ethnic origin or nationality, religion, denomination, beliefs, disability, age and sexual orientation. Three years from its entry into force, a post-legislative review of its effects is necessary.

The Defender has emphasised the controversy associated with the so-called Act on equal treatment on many occasions. The major concerns relate to the adoption of a closed list of discriminatory acts and to unequal protection against discrimination by indicating the areas in which the Act grants legal protection to victims of discrimination on the basis of certain selected criteria. In the course of legislative work it was also assumed that in the event of a breach of the principle of equal treatment the victim will only be eligible to a compensation for damages, not to redress for harm. As a result, to date common courts ruled on the basis of the above Act only in a small number of cases. In 2013, the total amount of compensations awarded in such cases in Poland was PLN 1,200. The problem is that pursuant to EU regulations sanctions for violation of the principle of equal treatment should be effective, proportionate and dissuasive. Thus, in order to prevent discrimination in Poland effectively it is necessary for the legislator to take urgent intervention with regard to the above issues.

## A. Preventing discrimination on grounds of disability and implementation of the Convention on the Rights of Persons with Disabilities

In September 2013 a year passed since Poland ratified the Convention on the Rights of Persons with Disabilities. Thus, initial conclusions and recommendations on effective implementation of the Convention can be formulated. The Defender requested the opinion of the Government Plenipotentiary for Disabled People on the matter. The most serious reservations are: absence of a long-term strategy for persons with disabilities and non-designation of a focal point within government whose task, pursuant to Article 33(1) of the Convention, is to facilitate action related to its implementation in different sectors and at different levels. Contrary to what is generally believed, the Government Plenipotentiary for Disabled People is not the focal point. His tasks are specified in the Act on professional and social rehabilitation and employing disabled people, but do not cover other areas of public, social or economic life.

In the Defender's opinion, one of the priority problems which require urgent intervention of the legislator is to eliminate the institution of legal incapacitation in its present shape and to replace it with a system of supported decision-making which, respecting the will and preferences of persons with disabilities, would ensure protection from exploitation and abuse without taking away the capacity to perform acts in law. The problem of



legal incapacitation is related with the regulation of the Family and Guardianship Code, which discriminates persons with disabilities in their right to get married and start a family. Appropriate changes in these areas should allow withdrawing Poland's reservations and interpretative declaration to the Convention on the Rights of Persons with Disabilities.

It is also necessary to continue actions for popularisation of inclusive education to allow the vastest possible group of students with disabilities to attend public schools close to their place of residence. One must not forget children and youth who require special organisation of instruction, curriculum, methods and conditions of learning. Hearing-impaired children are in a particularly difficult situation as they should be provided with universal opportunities to learn Polish Sign Language and Polish as an additional language. The Defender petitioned the Minister of National Education and the Government Plenipotentiary for Equal Treatment on the issue.

Accessibility of the so-called built environment to persons with disabilities is also a pressing problem. For many years the Defender has postulated introduction of a definition of "universal design" to Building Law and popularisation of universal design by introducing it to curricula for all professions that have to do with creating the built environment. The postulates also concern availability of information and adjustment of websites of public institutions to the needs of persons with disabilities. Studies on this subject explicitly show that the direction of changes in this regard is positive, but their pace is much too slow. The Defender issued a detailed report on the issue, entitled *Accessibility of Websites of Public Institutions to Persons with Disabilities*.

Analysis of complaints submitted to the Defender and legal acts in force yields a conclusion that changes are also necessary to adjust the conditions of taking entry exams for lawyer training and lawyer professional examinations to the needs of persons with disabilities and breastfeeding mothers. In her petition to the Minister of Justice, the Defender suggested a number of solutions which might facilitate taking these exams. The matter will be monitored by the Defender.

The problem touched upon in complaints filed to the Defender was also the interpretation of the provision of the Act on broadcasting which obliges TV broadcasters to ensure programme availability to the disabled. The Defender addressed the Minister of Culture and National Heritage regarding this issue. In reply, the Minister informed the Defender that the Ministry is currently in the process of reviewing the Act on broadcasting with a view to amending it. The Defender's remarks will be analysed in detail. The Defender monitors legislative work in this respect.

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

The Defender monitors penal proceedings in hate crimes on an ongoing basis. Analysis of preparatory proceedings files in cases concerning xenophobic acts, anti-



semitism and racism shows that in some instances the prohibited act was qualified incorrectly and decisions to discontinue proceedings may have been due to incomplete hearing of evidence. Data of the Ministry of Justice show that still only few hate crime perpetrators are convicted by a valid court verdict. In 2012, there were only 47 such convictions in Poland (with the total number of convictions being 408,107). In the Defender's opinion, it is necessary to introduce further corrections to the manner in which proceedings in discrimination crime cases are conducted. The Defender notified the Minister of Justice on her reservations.

The issue of access to education of foreigners staying in guarded centres is also of great importance. It should be noted that in detention the right of foreigners to education may not be exercised at an adequate level. It is an additional argument in favour of introducing a statutory ban on placing juveniles and their guardians in guarded centres, which has been raised by the Defender on multiple occasions. The absolute minimum in terms of exercising the right to education, which should be ensured by the Border Guard in cooperation with education authorities already at this stage, is to provide juveniles with the possibility to attend classes taught by qualified teachers on the basis of existing curricula. The Defender prepared a report on the issue entitled *Execution of the Right of Juvenile Foreigners to Education*.

The situation of a group of Romanian Roma who set up their camp in Wrocław exposed weakness of the state in terms of its integration policy for this social group. There is no doubt that the problem of providing adequate help and support to Roma people is not only local and requires action and coordination at the central level. It is necessary to work out solutions that would allow covering Roma and other migrants in a similar situation with a special government support programme.

## C. Preventing discrimination on grounds of age

The Defender continued to act for the introduction of a policy for seniors in Poland. In December 2013, the Council of Ministers adopted a document entitled *Assumptions of Long-Term Policy for Seniors in Poland for 2014-2020*, which is undoubtedly a step towards providing the elderly with dignified living conditions, making use of their potential and preserving their physical and psychological welfare, as well as professional and social activity, independence and self-reliance. Adoption of the Assumptions was welcomed by the Defender, but it should be noted that there is no implementing document that would define the procedure of implementing them. Actions taken by the Ministry of Labour and Social Policy cover only a part of planned changes. Thus, it is necessary to define responsibilities of other ministries in this respect at the government level.

The problem of so-called reverse mortgage, covered by the draft act prepared by the Ministry of Economy, remains unsolved. The Defender continued to exchange



letters with the Minister of Economy on the matter, pointing to absence of regulations in this area due to which the only model available on the market at present is the sale model which envisages transfer of ownership of real property in exchange for a life annuity paid in instalments. The model does not secure full rights and needs of seniors. The credit model, currently unavailable on the Polish market, offers greater possibilities as real property ownership remains with the borrower and it offers the heirs the option to purchase the property.

The Defender received alarming reports from some welfare care homes on significant shortcomings in providing health care services to seniors. Thus, it is necessary to establish senior care standards for such establishments and to intensify control and prevention. Control of centres which provide long-term care services was also raised by the Defender in her letter to the Minister of Labour and Social Policy on establishments which did not receive a voivode's consent to pursue such activity.

The Defender continued to act to improve the quality of health care for seniors. In her letter to the Minister of Health, she emphasised the system's inefficiency in this regard and its unpreparedness for sudden demographic changes and for a situation where ageing citizens are at risk of losing their autonomy and dignity without real access to adequate health care and support. The Defender requested the Minister for information on planned actions and initiatives, including legislative initiatives, in this regard and on implementation dates.

The Defender continues to note restrictions on employing people over specific age in certain functions or professions. It should be emphasised that every such restriction must be rationally justified and may not be based on arbitrary criteria. Therefore, it is necessary to analyse legal acts in terms of whether it is necessary to preserve some regulations that prevent further employment due to reaching certain age in the Polish legal system.

## D. Preventing discrimination on grounds of sex

In 2013, the Defender published a report entitled *Preventing Violence Towards Women, Including Elderly and Disabled Women*. In the Defender's opinion, as the ratification procedure of the Council of Europe Convention on preventing and combating violence against women and domestic violence is underway, actions should be intensified to adjust national regulations and practice to Convention standards. Existing legal acts and other programme documents on preventing and combating violence as well as the process of collecting and analysing data and conducting studies should take into account the specific nature of violence on grounds of sex, including the special situation of elderly and disabled women. It is necessary to ensure legal protection measures also in the case of violence in universities, schools or in women's or girls' sports, as well as in the case of mobbing or sexual harassment outside an employment relationship.



As the knowledge of representatives of services which prevent violence on grounds of sex is insufficient, it is extremely important to continue trainings to provide information on the violence mechanism and stereotypes connected with domestic violence, remedies and forms of support available to women. It is also important to conduct social and educational campaigns to make the society more sensitive to violence against women as an expression of unequal treatment as violation of fundamental human rights, with constant emphasis on specific problems of elderly and disabled women.

In her petition to the Minister of Treasury, the Defender pointed out the imbalance of the sexes in higher managerial positions in enterprises. The number of women which influence the most important economic and financial decisions is much lower than men. Appreciating the Minister's recommendations in this respect, adopting statutory regulations on a requirement of gender balance in management and supervisory boards of companies should be considered. First of all, such solutions should be introduced in companies with the participation of the State Treasury and municipal companies.

Due to the necessity to execute verdicts in the case of complaint of *Tysiąc v. Poland* and *R.R. v. Poland*, the Office of the HRD analysed acts of objection against physicians' opinions or certificates lodged to the Medical Committee for the Commissioner for Patients' Rights. The analysis yielded a conclusion that the objection procedure is ineffective and its introduction solely delivers on the formal requirements of the European Court of Human Rights towards Poland. The Defender petitioned the Minister of Health and the Commissioner for Patients' Rights on the recommendation to amend the Act on patients' rights and the Commissioner for Patients' Rights. In reply, the Minister of Health and the Commissioner for Patients' Rights declared they had prepared draft assumptions for the Act amending the Act on patients' rights and the Commissioner for Patients' Rights and certain other Acts which respond to some postulates of the Defender, such as simplification of the objection procedure.

## E. Preventing discrimination on grounds of sexual orientation and gender identity

Acts of violence motivated by hatred towards non-heterosexuals and transgender persons are a form of discrimination. Complaints about disrespectful treatment of non-heterosexuals and transgender persons by Police officers are particularly disturbing. All acts of this kind require decisive response from their superiors and law enforcement bodies. Further actions are necessary towards enhancing the knowledge and awareness of Police officers as to crimes motivated by hatred and homophobia, including the specific nature of discrimination on grounds of sexual orientation and gender identity.





The Defender continued to act on the problem of changing sex assigned at birth by transgender persons. In the Defender's view, it is necessary to adopt a comprehensive legal act on the issue that would define a fast, transparent and accessible procedure. It is particularly important to consider resigning from the current trial proceedings in sex change cases and replacing it by a non-trial procedure.

The problem of the scope of competence of the National Labour Inspectorate was revealed when the Defender carried out explanatory proceedings on termination of a civil law contract due to sexual orientation of the contractor. At present, the Inspectorate may only supervise compliance with Labour Law. The Act on equal treatment is separate from the Labour Law. In the case of persons employed on the basis of a civil law contract, the Inspectorate may only examine occupational health and safety and legality of employment. The Defender believes it is thus necessary to extent the competence of the National Labour Inspectorate to include these issues, which would allow effective prevention of discrimination also on grounds of other characteristics listed in the Act on equal treatment.

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

The Defender continued to monitor the execution of the verdict of the European Court of Human Rights on the case of complaint *Grzelak v. Poland* concerning the implementation of Polish regulations on the organisation of classes in religion and ethics in schools. The Defender requested the Prime Minister for explaining the reasons for not taking any specific actions for system-wide execution of the verdict. In reply, the Prime Minister declared he carried out preventive informational measures.

The Defender received complaints that prisons do not respect the religion or denomination of prisoners as they fail to adapt food to religious requirements and prevent prisoners from practicing their religion. Prison Service officers should pay particular attention to the standards resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international documents.



# VII

## Statistical information

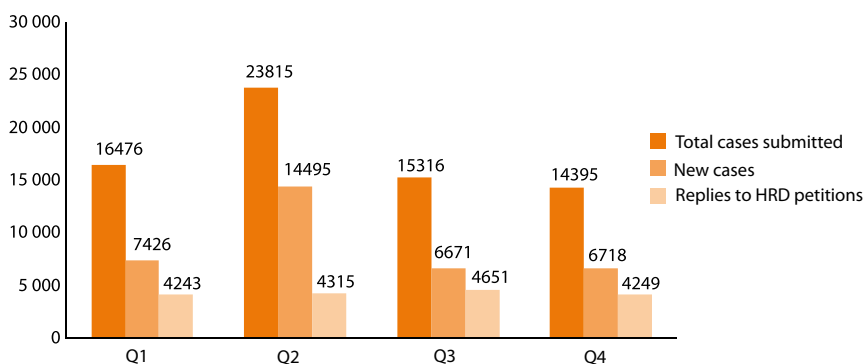


### Cases submitted to the Office of the Human Rights Defender

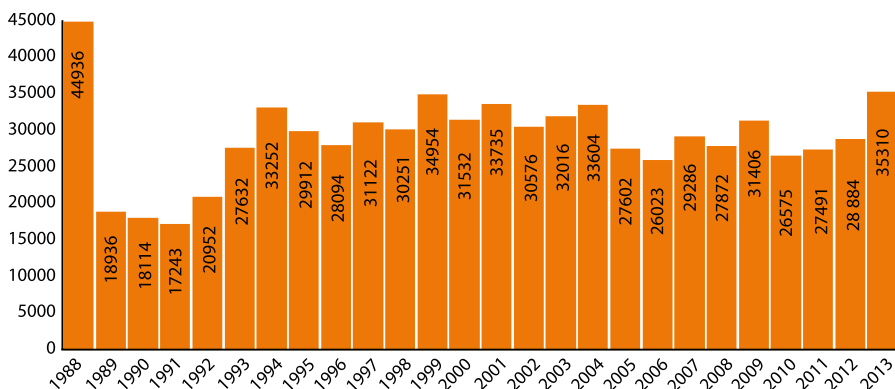
	2012 1.01.–31.12.	2013 1.01.–31.12.	%	Entire operation period of the HRD (1.01.1988–31.12.2013)
<b>Total number of cases received</b>	62,400	70,002	+12.2	1,291,021
<b>Number of new cases</b>	28,884	35,310	+22.2	757,310
<b>Number of replies to the Defender's petitions</b>	16,853	17,458	+3.6	420,156

In 2013, the Office of the HRD admitted 6,592 applicants and answered 39,683 phone calls, providing advice and information.

### Cases submitted to the Office of the HRD in 2013



### Total number of new cases in the years 1988–2013



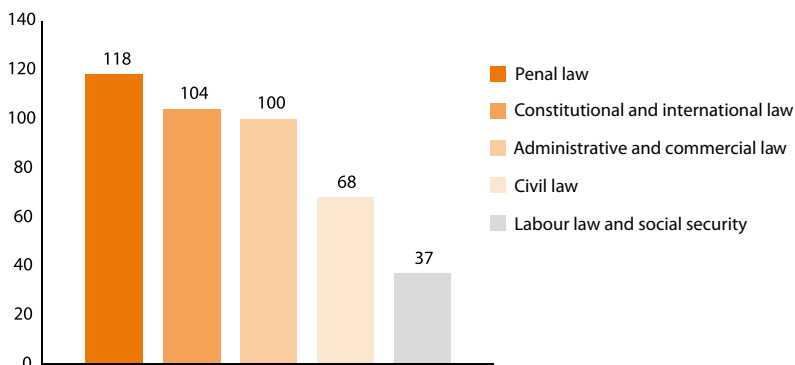


<b>The Human Rights Defender:</b>	<b>2013</b>
1) made interventions concerning systemic problems – including motions to take a legislative initiative	281 143
2) submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a superior act	27
3) made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	13
4) addressed juridical questions to the Supreme Court	3
5) made cassations	65
6) filed cassation appeals with the Supreme Court in labour cases	1
7) filed complaints for acknowledging inconsistency of a valid ruling with law – civil law	7
8) filed complaints about inconsistency of a valid ruling with the law – labour law	1
9) filed cassation appeals with the Supreme Administrative Court	7
10) submitted motions to the Supreme Administrative Court for interpretation of regulations	8
11) filed complaints with Voivodeship Administrative Courts	21
12) submitted requests to annul a ruling	2
13) joined court proceedings	11
14) joined administrative proceedings	2

**Of 449 general petitions and special appeal measures made by the Defender in 2013, the majority concerned the following:**

<b>Problem area</b>	<b>Number</b>	<b>%</b>
Penal law	118	26.3
Constitutional and international law	104	23.2
Administrative and commercial law	100	22.3
Civil law	68	15.1
Labour law and social security	37	8.2

**General petitions by problem areas**

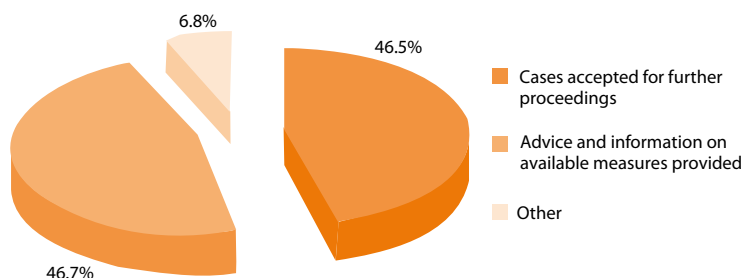


### Cases examined in 2013

In the period covered by this Report, 42,430 cases were examined, of which:

1	Manner of investigation	Number	%
1	2	3	4
Cases accepted for further proceedings	1 <b>Total</b>	<b>19,746</b>	<b>46.5</b>
	2 accepted for further proceedings including: on the initiative of the HRD	9,172 581	21.6
	3 as general petitions	10,574	24.9
Advice and information on available measures provided	4 <b>Total</b>	<b>19,803</b>	<b>46.7</b>
	5 advice and information on available measures provided	19,803	46.7
Other	6 <b>Total</b>	<b>2,881</b>	<b>6.8</b>
	7 complaint referred to a competent authority	766	1.8
	8 complaint returned to be supplemented with necessary information	831	2.0
	9 not accepted for further proceedings <sup>8</sup>	1,284	3.0
<b>Total</b>		<b>42,430</b>	<b>100.0</b>

### Manner of investigation in 2013



Of the 42,430 complaints examined by the HRD, the majority concerned the following:

Problem area	Number	%
Penal law	13,721	32.3
Administrative and commercial law	13,155	31.0
Civil law	6,389	15.1
Labour law and social security	5,764	13.6
Constitutional and international law	2,808	6.6
Other	593	1.4

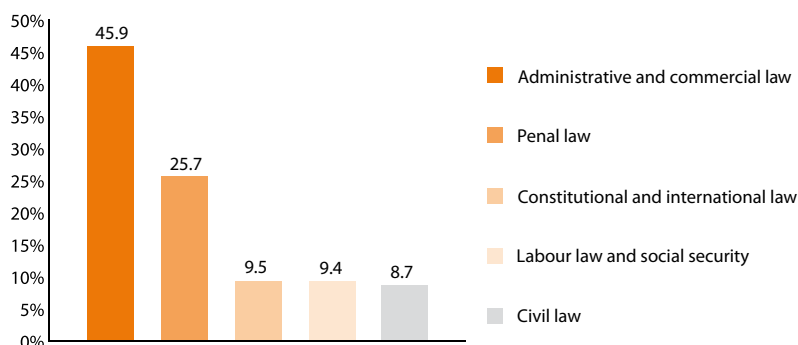
<sup>8</sup> Incomprehensible complaints and letters submitted to other bodies and notified to the Defender.



Of the 42,430 complaints examined in 2013, 19,746 were accepted for further proceedings and mainly concerned the following:

Problem area	Number	%
Administrative and commercial law	9,062	45.9
Penal law	5,065	25.7
Constitutional and international law	1,877	9.5
Labour law and social security	1,867	9.4
Civil law	1,723	8.7
Other	152	0.8

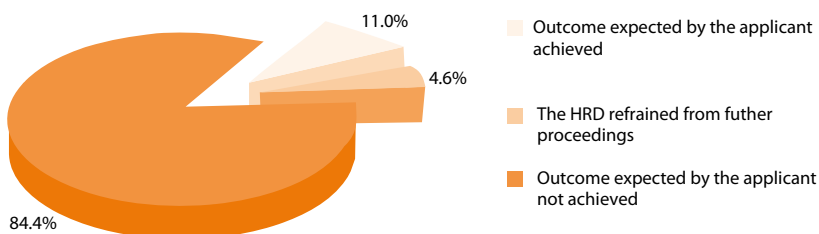
Cases examined by problem area



Proceedings were completed in 18,768 cases undertaken in 2013 and in previous years.

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant and the HRD achieved	1	<b>Total (2+3)</b>	<b>2,059</b>	<b>11.0</b>
	2	Applicant's claims confirmed	1,035	5.5
	3	General petition of the HRD acknowledged	1,024	5.5
Proceedings discontinued	4	<b>Total (5+6)</b>	<b>862</b>	<b>4.6</b>
	5	Proceedings pending (ongoing procedure)	406	2.2
	6	The HRD refrained from further proceedings (for objective reasons)	456	2.4
Outcome expected by the applicant not achieved	7	<b>Total (8+9+10)</b>	<b>15,847</b>	<b>84.4</b>
	8	Applicant's claims not confirmed	5,965	31.8
	9	General petition of the HRD not acknowledged	9,807	52.2
	10	Measures available to the HRD exhausted	75	0.4
<b>Total</b>			<b>18,768</b>	<b>100,0</b>

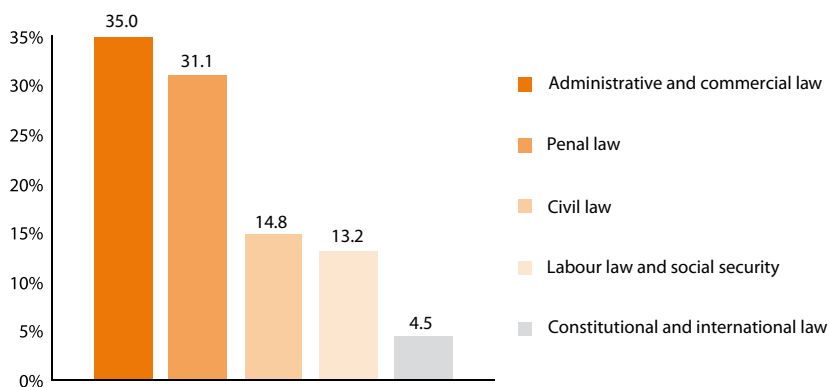
### Completion of cases undertaken



### Problem areas targeted by new cases (applications) in 2013

	Problem area	Number	%
1	Constitutional and international law	1,601	4.5
2	Penal law	10,975	31.1
3	Labour law and social security	4,653	13.2
4	Civil law	5,235	14.8
5	Administrative and commercial law	12,364	35.0
6	National Preventive Mechanism	269	0.8
7	Other	213	0.6
8	<b>Total</b>	<b>35,310</b>	<b>100.0</b>

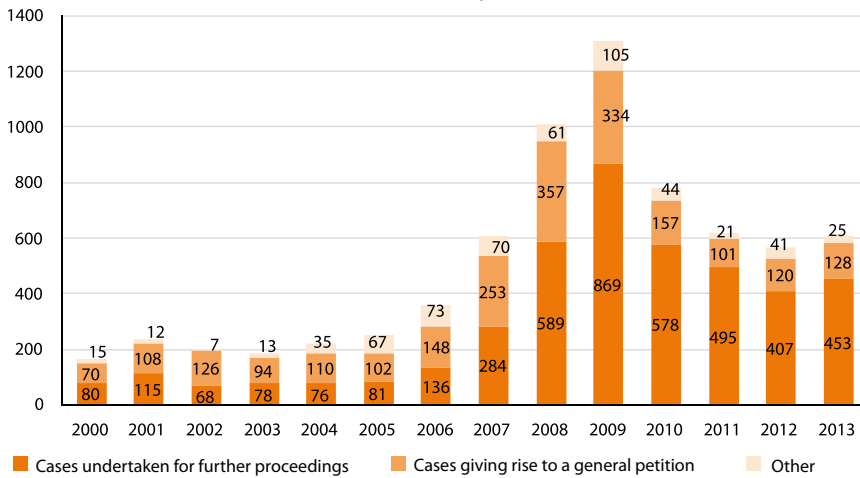
### Major problem areas targeted by new cases in 2013



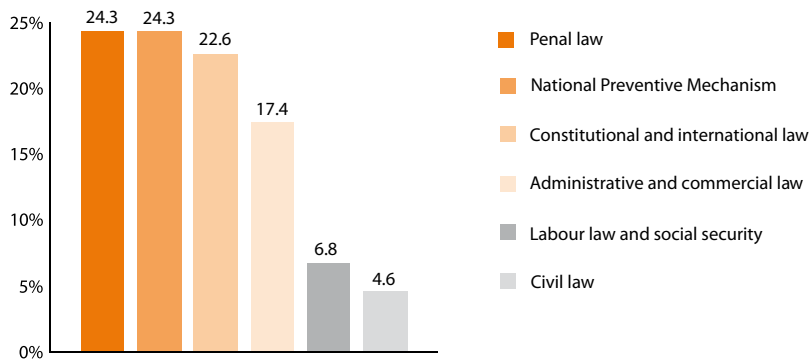




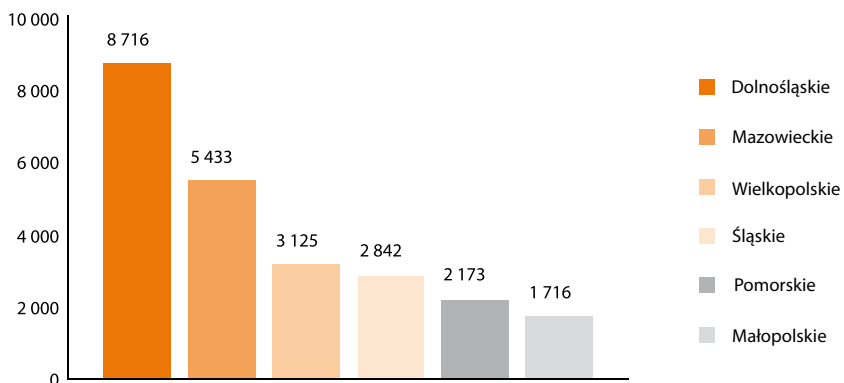
### Cases initiated by the HRD



### Cases initiated by the HRD by problem area

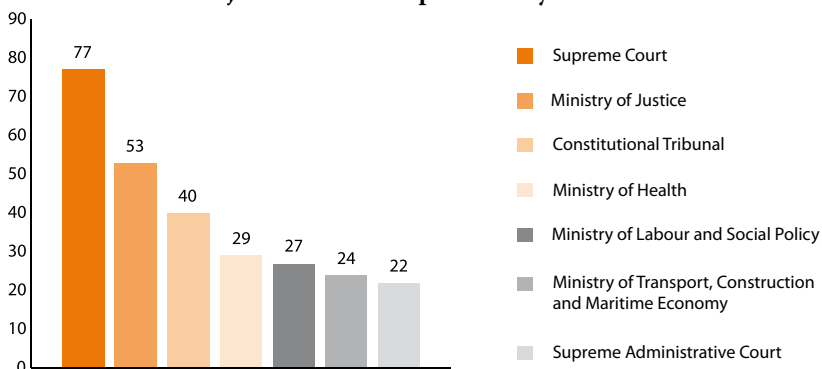


### Greatest number of new cases by particular voivodeships

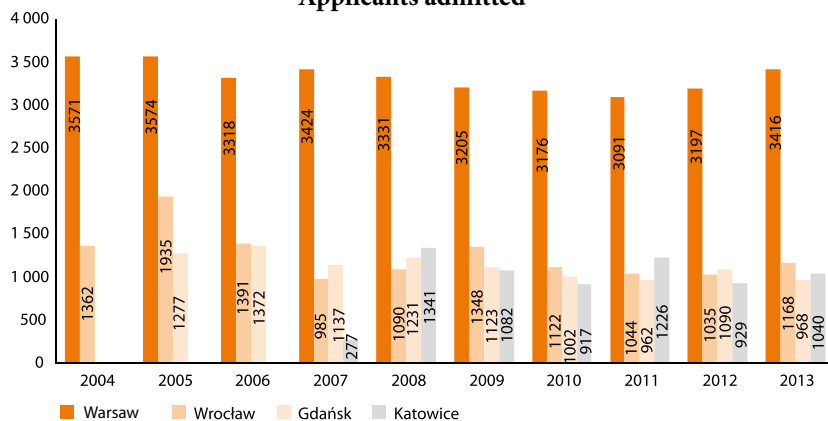




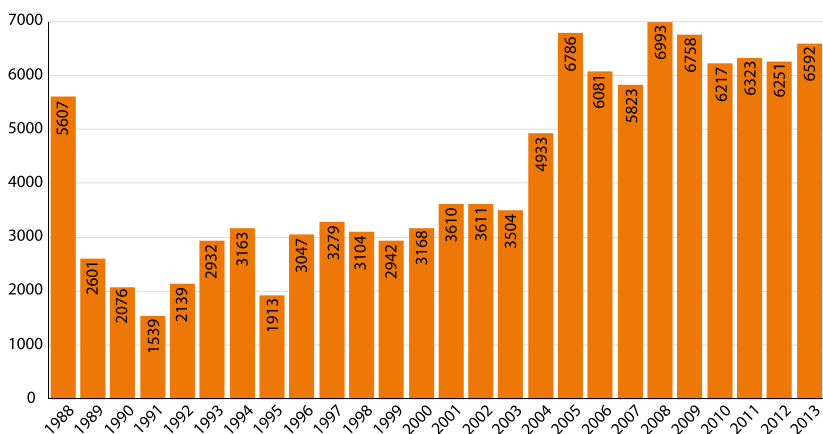
### Major addressees of petitions by the HRD



### Applicants admitted

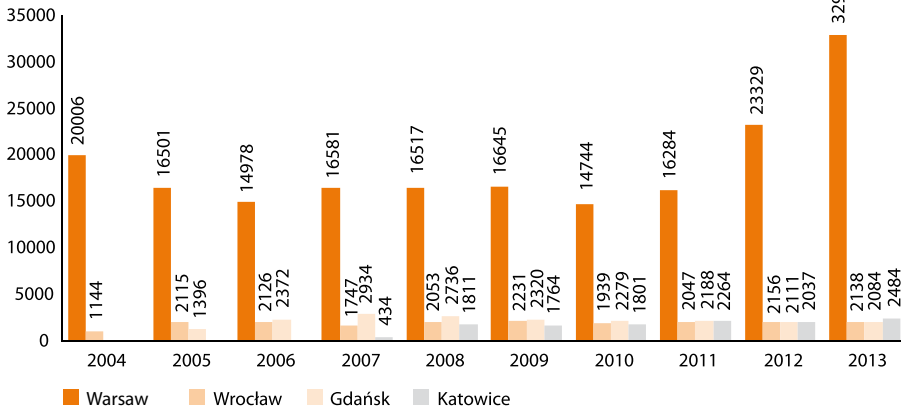


### Applicants admitted in the years 1988–2013

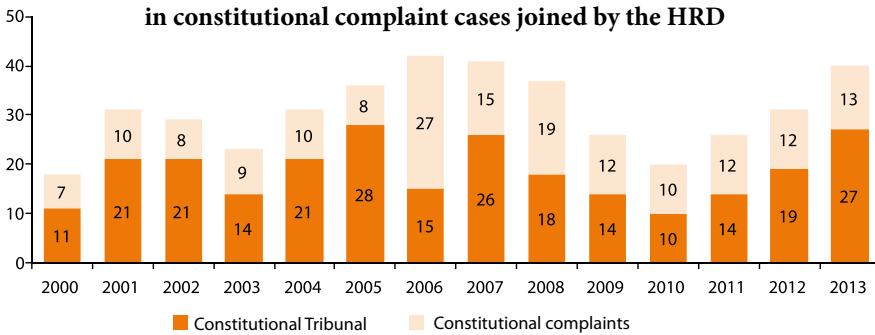




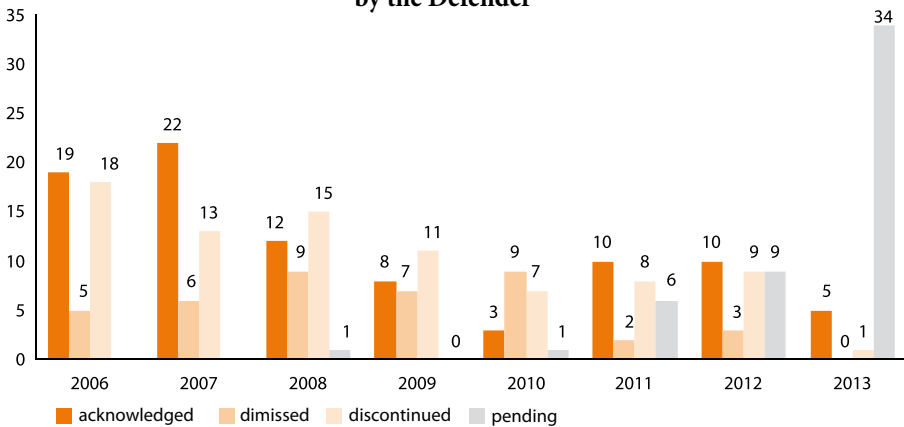
### Advice provided by telephone



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

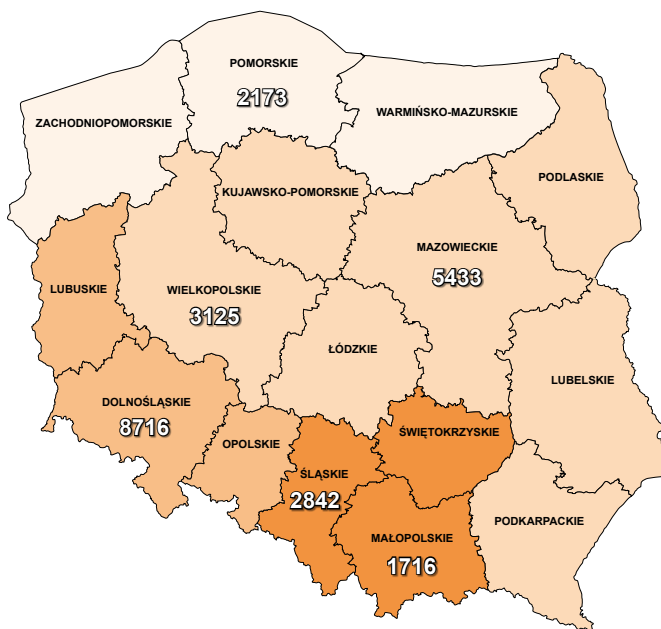


### Decisions of the Constitutional Tribunal on motions to declare the regulations incompatible with the Constitution and in constitutional complaint cases joined by the Defender<sup>9</sup>

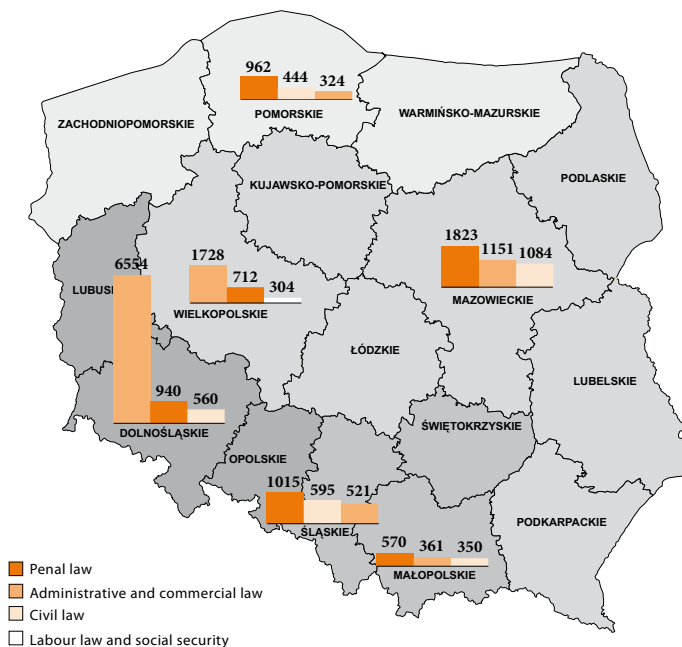


<sup>9</sup> As at 31 December 2013.

### The largest number of new cases by particular voivodeships in 2013



### Major problem areas targeted by new cases in voivodeships with the greatest number of new cases in 2013



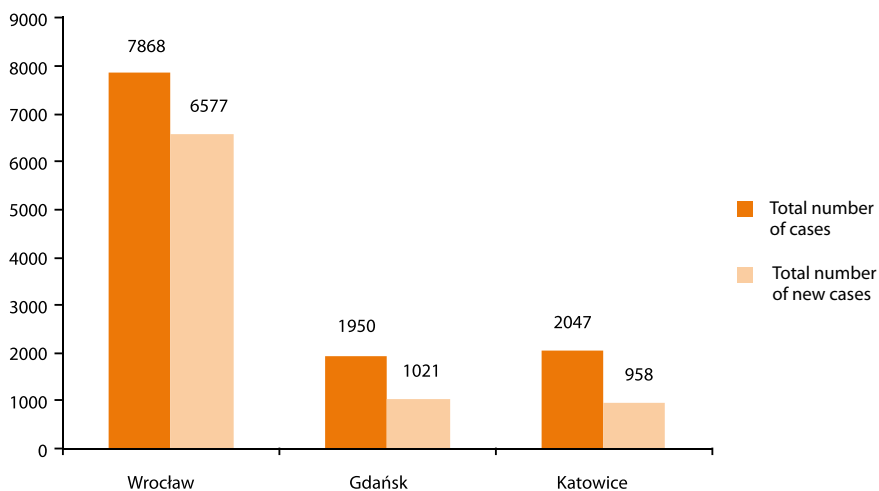


### Offices of Local Representatives



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

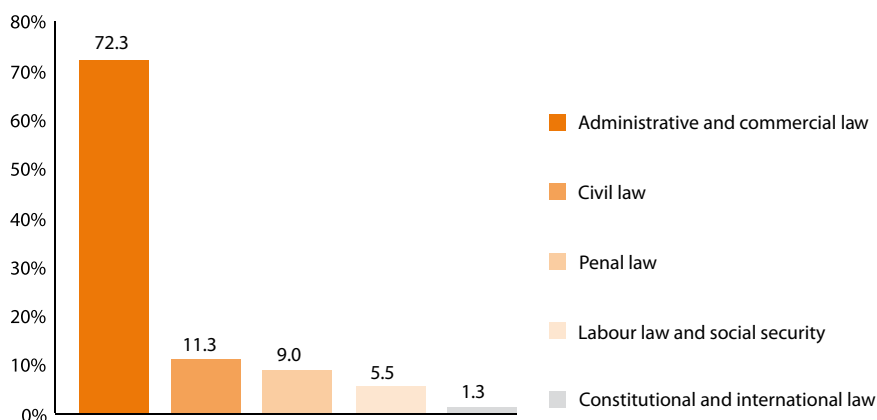
### Number of cases filed to the Offices of Local Representatives



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

Problem area	Number	%
Administrative and commercial law	6,184	72.3
Civil law	963	11.3
Penal law	771	9.0
Labour law and social security	468	5.5
Constitutional and international law	108	1.3

Major problem areas in Offices of Local Representatives of HRD



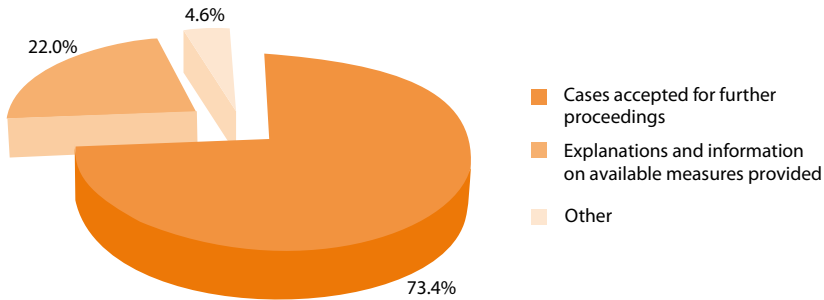
In the period covered by this Report, 8,872 new cases were examined by the Offices of Local Representatives, of which:

Manner of investigation	Number	%
– Cases accepted for further proceedings	6,511	73.4
– Advice and information on available measures provided	1,954	22.0
– Complaint referred to a competent authority	52	0.6
– Complaint returned to be supplemented with necessary information	52	0.6
– Not accepted for further proceedings*	303	3.4

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



### Cases considered by Offices of Local Representatives of the HRD



### Offices of Local Representatives completed proceedings in 6,500 cases undertaken in 2013 and in previous years

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant achieved	1	<b>Total (2+3)</b>	<b>156</b>	<b>2.4</b>
	2	Applicant's claims confirmed	129	2.0
	3	General petition of the HRD acknowledged	27	0.4
Proceedings discontinued	4	<b>Total (5+6)</b>	<b>72</b>	<b>1.1</b>
	5	Proceedings pending (ongoing procedure)	50	0.8
	6	The HRD refrained from further proceedings (for objective reasons)	22	0.3
Outcome expected by the applicant not achieved	7	<b>Total (8+9+10)</b>	<b>6,272</b>	<b>96.5</b>
	8	Applicant's claims not confirmed	606	9.3
	9	General petition of the HRD not acknowledged	5,620	86.5
	10	Measures available to the HRD exhausted	46	0.7
<b>Total</b>			<b>6,500</b>	<b>100.0</b>

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

