

# SUMMARY

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OF THE REPORT ON THE ACTIVITY  
OF THE OMBUDSMAN  
IN POLAND

2015

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**Summary of the Report on the Activity  
of the Ombudsman in Poland 2015**

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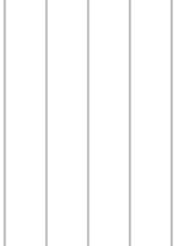
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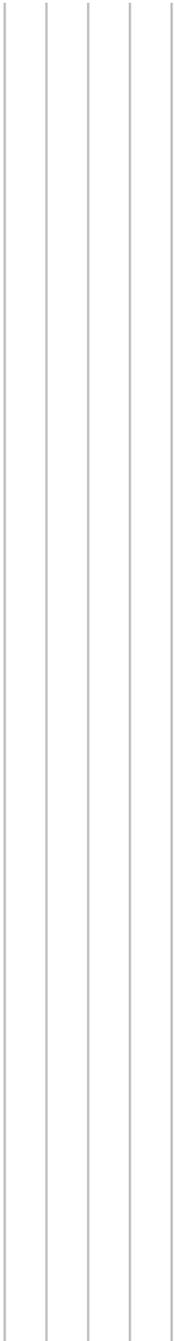


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## Introduction





In accordance with Art. 80 of the Constitution of the Republic of Poland, everyone has, pursuant to relevant statutory principles, the right to file an application with the Commissioner for Human Rights for assistance in protecting their freedoms or rights violated by public authorities. The application filed with the Commissioner for Human Rights is free of charge and must not be submitted in any particular form. Due to broad bases for action, and the absence of formal requirements and fees, a large number of applications are directed to the Commissioner for Human Rights.

Duties of the Commissioner for Human Rights were performed by Irena Lipowicz until 9 September 2015; Adam Bodnar has been the Commissioner for Human Rights since that date, i.e. the date of giving an oath before the Sejm.

In 2015, a total of 57,627 applications were directed to the Commissioner for Human Rights, including 27,376 applications in new cases. Furthermore, employees of the Office of the Commissioner for Human Rights received 5,656 people, while they conducted 38,074 phone conversations under the free Infoline operated by the Office of the Commissioner for Human Rights, while providing their interlocutors with appropriate advice and explanations.

The Commissioner for Human Rights may also initiate proceedings on its own initiative, i.e. upon analysis of information provided by the mass media. *Ex officio* proceedings were also undertaken in conjunction with information received by the Commissioner for Human Rights (inter alia from prisons, pre-trial detention facilities, Police) on so-called extraordinary cases involving public officials. In 2015, 506 *ex officio* proceedings were undertaken by the Commissioner for Human Rights (including 132 in the form of a general intervention).

In 2015, issues in the fields of criminal law (22.2% of cases), law on enforcement of criminal sanctions (20.9% of cases), civil law (19.1% of cases), administrative and economic law (15% of cases), and labour law and social security (11.6%) were dominant in complaints addressed to the Commissioner for Human Rights.

Tasks of the Commissioner for Human Rights carried out with the help of the Office of the Commissioner for Human Rights. These tasks were performed in 2015 by the Office in Warsaw and by the Offices of the Local Representatives in Wrocław, Gdańsk and Katowice. Furthermore, employees of the Office of the Commissioner for Human Rights collected applications in points in Bydgoszcz and Częstochowa on a monthly basis.

The number of cases in which under the examination of the application people turning to the Commissioner for Human Rights are given explanations and information on measures which they are entitled to take remains high. This proves not only that applicants have a low level of legal knowledge, but it also reveals the lack of universal access to legal assistance. It is to be hoped that this factual state will change upon the entrance into force of the Act of 5 August 2015 on free legal assistance and legal education (Journal of Laws item 1255).

In the period covered by this document, the Commissioner for Human Rights addressed 286 problem interventions. The Commissioner for Human Rights took advantage of this procedure for signalling violations of rights or freedoms of an individual when individual cases under examination indicated that the practice of applying law in a manner leading





to such violations was becoming commonplace. The interventions were also addressed when analysis of complaints submitted to the Commissioner for Human Rights indicated that the source of violations of freedoms or rights of an individual was the content of legal regulations. In 2015, 144 interventions of the Commissioner for Human Rights referred to the need to take up a legislative initiative in order to eliminate the above mentioned violations.

The Commissioner for Human Rights has been an active participant of proceedings before the Constitutional Tribunal for many years now. The engagement of the Commissioner for Human Rights in the proceedings before the Constitutional Tribunal increased additionally due to the entrance into force of the Act of 25 June 2015 on the Constitutional Tribunal (Journal of Laws item 1064). The Act allows the Commissioner for Human Rights to declare participation in proceedings before the Constitutional Tribunal in any case (and not as formerly, exclusively in proceedings instituted on the basis of a constitutional complaint), excluding proceedings in the mode of a preventive control of the statute. In 2015, while using the capacity to submit applications independently, the Commissioner for Human Rights filed 21 applications with the Constitutional Tribunal, joined 12 proceedings instituted on the basis of a constitutional complaint, as well as 5 proceedings instituted by a question of law raised by a court and 4 proceedings instituted by an application of other entities.

Questions of law directed by the Commissioner for Human Rights to expanded adjudicating benches of the Supreme Court and the Supreme Administrative Court play a special role in relations with the judiciary. These questions support unification of the judicature, and therefore constitute a legal measure to protect the principle of equality before the law. Non-uniform interpretation of the law exercised by courts in practice leads to violation of the principle of equality before the law.

In conjunction with discrepancies discovered in the case-law of common courts in 2015, the Commissioner for Human Rights submitted 4 questions of law to be adjudicated by the Supreme Court and 1 question of law to be adjudicated by the Supreme Administrative Court. In respect of individual cases adjudicated by courts, the Commissioner for Human Rights dispatched 60 cassation appeals and 2 cassation appeals against final verdicts and judgements from common courts. With regard to administrative cases, the Commissioner for Human Rights dispatched 12 appeals to voivodeship administrative courts and 6 cassation appeals to the Supreme Administrative Court.

In the course of performing the function under the National Preventive Mechanism<sup>1</sup> in 2015, 121 prevention visits were conducted in penitentiary institutions (inter alia prisons, pre-trial detention facilities, Police facilities for arrested persons, youth education centres), as well as 1 ad hoc visit.

The Commissioner for Human Rights also performs tasks related to the implementation of the principle of equal treatment, entrusted to the Commissioner for Human Rights under provisions of the Act of 3 December 2010 on implementing some regulations of the European Union in the field of equal treatment (Journal of Laws No. 254, item 1700).

<sup>1</sup> The Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws of 2014, item 1648, as amended), and the Optional Protocol (Journal of Laws of 2007, No. 30, item 192).



The scope of these tasks includes the examination of complaints concerning violation of the principle of equal treatment, as well as the analysis, monitoring and supporting of equal treatment of all people, conducting independent research on discrimination, and developing and issuing independent reports and recommendations regarding discrimination-related issues. In the performance of these tasks, the following reports containing analyses and recommendations were issued in 2015: “Availability of religion classes for minority religions and ethics classes within school education” [PL “Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki w ramach edukacji szkolnej”], “Availability of academic education for persons with disabilities” [“Dostępność edukacji akademickiej dla osób z niepełnosprawnościami”], “Life-work balance. Equal treatment of parents on the labour market” [PL “Godzenie ról rodzinnych i zawodowych. Równe traktowanie rodziców na rynku pracy”].

Furthermore, the Commissioner for Human Rights is an independent organ responsible for supporting, protecting and monitoring the implementation of provisions of the Convention on the Rights of Persons with Disabilities. The most important remarks on the situation regarding the rights of persons with disabilities are included in the “Report of the Commissioner for Human Rights on the fulfilment of the obligations resulting from the Convention on the Rights of Persons with Disabilities in Poland” [PL “Sprawozdanie Rzecznika z realizacji przez Polskę zobowiązań wynikających z Konwencji o prawach osób niepełnosprawnych”]. The Report is the fulfilment of the obligation to monitor the implementation of the Convention that has been entrusted to the Commissioner for Human Rights in accordance with Art. 33(2) of the Convention.

Taking into consideration the importance and interdisciplinary nature of tasks in the field of equal treatment, as well as tasks resulting from the protection of the rights of persons with disabilities, the Commissioner for Human Rights appointed the Deputy Human Rights Commissioner for Equal Treatment with the Equal Treatment Team having been established within the organizational structure of the Office. Furthermore, Expert Committees in the Office of the Commissioner for Human Rights continue their works regarding the principle of equal treatment: the Expert Committee on Elderly People, the Expert Committee on Migrants, the Expert Committee on People with Disabilities and the Expert Committee on Combating Homelessness that was established in 2015. The aim of the Committees is to support the Commissioner for Human Rights in monitoring the observance of the principle of equal treatment and the implementation of the Convention on the Rights of Persons with Disabilities.

In the framework of the cooperation Commissioner for Human Rights with civil society organizations for the protection of human rights and freedoms, there are numerous meetings, seminars and conferences organized in the Office, inter alia those regarding the protection of the rights of homeless persons, persons with disabilities and migrants. Having taken up his duties, Adam Bodnar established an organizational unit in the Office (Social Projects Centre) that is responsible for the cooperation with civil society organizations. The cooperation involves the organization of regional consultations in individual voivodships (meetings of the Commissioner for Human Rights and employees of the Office with civil society organizations and leaders).





Dissemination of knowledge about civil rights and information concerning the activity of the Commissioner for Human Rights was an important part of the tasks Commissioner for Human Rights in 2015. Over 800 requests for information and questions asked by the media were addressed. There were 20.344 publications on activities of the Commissioner for Human Rights published in the press, radio, TV and Internet. During the first six months, TVP Info broadcasted 13 episodes of the programme “Rules of the Game” [PL “Reguły Gry”] involving the representatives of the Office of the Commissioner for Human Rights. Additionally, cooperation continued with Janusz Weiss and Programme I of Polskie Radio. There was a total of 895 communications on the activities of the Office of the Commissioner for Human Rights published on its website, including those in English. Forty-eight (48) newsletters of the Commissioner for Human Rights were distributed by electronic mail with each of them to over 5 thousand addressees (institutions and individuals).

The Commissioner for Human Rights and the Deputy Commissioner gave interviews and speeches inter alia to the editorial staff of: Polskie Radio Programme I and III, TOK FM, Polsat, TVP INFO, TVN 24, TVP 1, Dziennik Gazeta Prawna, RDC, Superstacja, Tygodnik Powszechny, Telewizja Republika, Rzeczpospolita, RMF FM and RMF Classic, Gazeta Wyborcza, ngo.pl. Statements made by the Commissioner for Human Rights were also often published in local media, specialist periodicals and foreign media.

Under the project “Ambassador of Human Rights”, the Commissioner for Human Rights also developed its cooperation with students of law and administration, as well as students of other subjects. Under the project aimed at counteracting the speech of hatred (the so-called “hejt”), the Office of the Commissioner for Human Rights organized “round-table” meetings with participation of representatives of authorities, non-governmental organizations, media, entrepreneurs and scientists. The initiative involved a discussion on how to react to aggression on the Internet on one hand, and how deep such a reaction should be in order to ensure the freedom of speech on the other hand.

In 2015, cooperation continued with the International Ombudsman Institute (IOI). In Warsaw, a meeting<sup>2</sup> of the European Board of Directors of the IOI was held that was devoted to the most important problems faced by ombudsmen and initiatives taken by the Institute in cooperation with national institutions for the protection of human rights in other countries. In 2015, the European region of the Institute gave additionally support to the Slovak Ombudsman, as well as participated in activities in order to establish the institution of a central ombudsman in Italy.

In cooperation with the European Human Rights Defender, the 10. Seminar of the European Network of Human Rights Defenders was organized in Poland under the heading: “Human Rights Defenders against discrimination”<sup>3</sup>. Cooperation among Ombudsmen from the states of the Visegrad Group is to be continued.

In September<sup>4</sup>, Adam Bodnar participated in a meeting of experts in the field of the protection of the rights of persons with disabilities from the Visegrad countries and the Western Balkans that was organized by the Office of the Commissioner for Human Rights

<sup>2</sup> January 2015.

<sup>3</sup> 27-29 April 2015.

<sup>4</sup> 14-15 September 2015.



and the Ministry of Foreign Affairs of the Republic of Poland. The event continued activities conducted by the Commissioner for Human Rights to strengthen the protection system of human rights and exchange experiences with countries of the Western Balkans.

In December 2015, the Commissioner for Human Rights paid a working visit to the Office of the Austrian Ombudsmen<sup>5</sup> and held meetings with authorities of the International Ombudsman Institute, representatives of non-governmental organizations and the scientific community. An important point on the agenda of the visit included talks in the Austrian Integration Fund in the context of the migration crisis and the role institutions protecting human rights are to play in the protection of the rights of refugees and migrants.

Although the Commissioner for Human Rights has taken over new tasks in recent years (the performance of the mandate of the National Preventive Mechanism, the principle of equal treatment, monitoring the implementation of the Convention on the Rights of Persons with Disabilities, monitoring inappropriate action of the Police and other services), they have not been followed by sufficient financial support, which was signalled by the Commissioner for Human Rights in following yearly reports. The state became even worse in 2015, while the reduction in the budget of the Commissioner for Human Rights for 2016 will cause a further decline in this area. In consequence, e.g. the scope of preventive inspections to detention facilities evaluated as insufficient by international organs will not only be increased, but will have to be limited to a larger extent. The period for examining applications submitted by applicants will also prolong significantly, including cassations in criminal cases.

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<sup>5</sup> 16-17 December 2015.





## The most important matters in the fields of constitutional and international law





## A. Right to good legislation

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution of the Act on amending certain acts in relation to the performance of the budgetary act in the scope related to courts, the Constitutional Tribunal and the Commissioner for Human Rights. In the opinion of the Commissioner for Human Rights, the principle of the budgetary autonomy of courts, the Constitutional Tribunal and the Commissioner for Human Rights is violated by the so-called supplementary budgetary acts that are proceeded on the legislative initiative of the Council of Ministers. The Commissioner for Human Rights is currently awaiting a trial date to be announced.

In an intervention to the President of the Government Legislation Centre, the Commissioner for Human Rights pointed out that despite of the rationalisation of the government legislation process there are still delays in the preparation and issue of implementing acts to statutes, which has a highly adverse impact on the functioning of the legal system and the observance of the rights of individuals. In response, the President assured that the Centre would take comprehensive measures aimed at minimizing the arrears with regard to implementing acts to statutes.

The Commissioner for Human Rights submitted an intervention to the Minister of Health in order to undertake legislative works on basic provisions governing biobanks without delay. In response, the Minister of Health informed that the problem of depositing human biological material in biobanks for scientific research purposes was one of the topics discussed by the Scientific Council by the Minister of Health. The Minister of Health expressed his hope that the position worked out by the Council and guidelines prepared by the Minister of Science and Higher Education would make it possible to choose the right course of legislative works.

In interventions addressed to the Minister of Labour and Social Policy on the amendment of regulations concerning the granting of social benefits for women whose children were stillborn with no possibility to establish their sex, the Commissioner for Human Rights pointed out the necessity to amend relevant regulations. The Minister of Labour and Social Policy did not share the position of the Commissioner for Human Rights.

The Commissioner for Human Rights submitted an intervention to the Minister of the Interior and Administration with regard to the amendment of the statute on passports by extending the right to a reduced fee for the issue of a passport onto persons receiving pre-retirement benefits. In response, the Minister of the Interior and Administration informed that the Ministry was currently evaluating legal provisions on passports in terms of a potential amendment to the passport system, and the issue raised in the intervention would be taken into account in the course of the upcoming legislative works on passport regulations.

The Commissioner for Human Rights applied to the President of the Institute of National Remembrance to initiate legislative amendments in order to eliminate legal gaps in the registration procedure of lustration declarations. In response, the President of the Institute of National Remembrance stated that it was not necessary to make amendments to the lustration statute.





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

While taking into account the need to protect human and civil rights, the Commissioner for Human Rights filed an application with the Constitutional Tribunal for examining the consistency with the Constitution of the Act of 19 November 2015 on amending the Constitutional Tribunal Act. Additionally, the Commissioner for Human Rights joined the proceedings before the Constitutional Tribunal initiated by the application of a group of Sejm Deputies with regard to the Constitutional Tribunal Act of 25 June 2015 within the scope related to the provisions allowing to appoint 2 judges of the Constitutional Tribunal to the posts of the judges whose terms of office expired in December 2015. In the judgements of 3 December 2015 (ref. no. K 34/15) and 9 December 2015 (ref. no. K 35/15), the Constitutional Tribunal shared the position of the Commissioner for Human Rights and adjudicated that the Constitutional Tribunal Act of 25 June 2015 was not consistent with Art. 194(1) of the Constitution to the extent it allowed the Sejm to elect 2 judges of the Constitutional Tribunal in October to the posts of those judges whose terms of offices expired in December. On the other hand, the provision regarding the October election of 3 judges of the Constitutional Tribunal to the posts of the judges whose terms of office expired in November was consistent with the Constitution. With regard to the amendment of the Act, the Constitutional Tribunal adjudicated that *inter alia* the provision allowing the Sejm to re-elect 3 judges to the posts of the judges whose terms of office expired on 6 November 2015 was not consistent with the Constitution.

In an intervention to the Minister of Justice, the Commissioner for Human Rights emphasized the need to take measures in order to support the community of lay judges in exercising their function. Otherwise, there may be a deficit of persons interested in exercising the function of a lay judge in the near future, while the constitutional principle of citizens' participation in the administration of justice will be completely deprived of its significance. The Minister of Justice did not share the position of the Commissioner for Human Rights.

The Commissioner for Human Rights submitted an intervention to the Minister of Justice with regard to the procedure of calling a judge back from a delegation. The applicable provisions provide neither for a possibility to raise any form of complaint against the decision of the Minister of Justice with regard to calling a judge back from a delegation to a different court nor set out premises which the Minister of Justice shall take into account while calling a judge back from a delegation. Furthermore, the current mechanisms of calling judges back from delegations may be used as a form of penalty or pressure on the delegated judge. The Commissioner for Human Rights is awaiting a response from the Minister of Justice.

The Commissioner for Human Rights addressed the Minister of Justice with regard to increasing salaries of judges' assistants. The Commissioner for Human Rights shared the position of the Constitutional Tribunal which concluded that it was worrying from the point of view of the performance of the constitutional principles and values that the remuneration of employees of the judiciary had not been adjusted for many years. In response, the Minister of Justice presented information on the amount of financial resources planned in the draft budget for 2016 for salaries of judges' assistants. Additionally, the Minister of



Justice emphasized that despite of the fact that salaries in the budgetary were frozen in the years 2010-2015, the Ministry of Justice had been taking measures in order to improve the situation of employees of the judiciary.

In an intervention to the Minister of Justice, the Commissioner for Human Rights pointed out the necessity to regulate by statute the authorizations of employees of the security service in court buildings, as the rules and regulations of courts were the main basis of their authorizations to examine the content of bags and clothes brought into courts. The Commissioner for Human Rights is awaiting a response from the Minister of Justice.

In another intervention to the Minister of Justice, the Commissioner for Human Rights expressed its doubts concerning the functioning of the current model of court experts that did not guarantee that persons ensuring the issue of substantially correct, thorough and timely opinions were appointed in court and preparatory proceedings. In response, the Minister of Justice informed that he was currently awaiting research studies on court experts to be completed by the Institute of Justice. Only then it would be possible to initiate further legislative works.

The Commissioner for Human Rights applied to the Minister of Justice to consider the initiation of legislative works aimed at amending the legal state with regard to the obligation to pay a registry fee while submitting an application for preparing a justification to the ruling and its delivery, combined with the initiation of the procedure of preparing the justification. In its response, the Minister of Justice objected the proposed changes.

In an intervention to the Minister of Justice, the Commissioner for Human Rights pointed out a deficit in the right of enforcement officers (bailiffs) to a fair court trial in the disciplinary proceedings conducted against them. The Minister of Justice did not agree with the opinion of the Commissioner for Human Rights, while pointing out that in the opinion of the Ministry of Justice, the applicable regulations were consistent with constitutional and international standards on the right to a fair court trial.

## C. Freedom of speech and right to information

The Commissioner for Human Rights declared participation in a proceedings before the Constitutional Tribunal on the legal question regarding the consistency with the Constitution of the Press Law. The Commissioner for Human Rights concluded that a provision of the Press Law was inconsistent with the Constitution to the extent it prohibited the publishing of personal data and images of public figures against whom a proceedings was conducted with regard to their public activity. The Commissioner for Human Rights is currently awaiting a trial date to be announced.

The Commissioner for Human Rights declared its intent to participate in a proceedings on the constitutional complaint regard the Act on the access to public information, while concluding that the premise of significant public interest in receiving processed information should be referred to the content of the requested processed information and not the characteristics of the applicant, in particular the possibility to use the information. The Commissioner for Human Rights is currently awaiting a trial date to be announced.





The Commissioner for Human Rights addressed an intervention to the Minister of Finance on the issue of limiting the rights of candidates for certified auditors to record the content of their own examination papers during their reviews, in particular in case they fail an examination within the certified auditor admission procedure, and the access of these persons to documents containing schemes of correct solutions and answers to the relevant examination questions. The Minister of Finance informed that works were currently carried out in order to specify more in detail the provisions in order to remove any concerns.

The Constitutional Tribunal examined the application of the Commissioner for Human Rights with regard to the limitation of the freedom of speech and adjudicated that the penalty in the form of a fine or arrest for demonstrating disregard of the Polish Nation, the Republic of Poland or its constitutional organs in public places, as set out in the Code of Offences, was consistent with the Constitution. In the opinion of the Constitutional Tribunal, the essence of the freedom of speech had not been violated, while the introduced limitation justified by a premise of public order did not violate the principle of proportionality.

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

The Commissioner for Human Rights addressed the Inspector General for the Protection of Personal Data and the President of the Polish Public Procurement Office with regard to the protection of the privacy of physical persons participating in tender procedures. In the opinion of the Commissioner for Human Rights, the sufficient solution that intervened in the privacy of a physical extent to the least extent would involve the placing of information exclusively about the locality where the contractor lived, excluding its detailed address. In response, the Inspector General for the Protection of Personal Data informed about the submission of an application to the Prime Minister for considering the introduction of amendments to the Public Procurement Law with regard to regulations on the processing of personal data. On the other hand, the President of the Polish Public Procurement Office found it necessary to place the address of the contractor in the announcement about granting an order, including documents on the selection of the best tender, as such an obligation resulted from the EU law.

In an intervention to the Minister of Justice, the Commissioner for Human Rights signalled the potential inconsistency of provisions of the Regulation concerning the organization and the scope of activities of family diagnostic and consultation centres with regard to the processing of personal data of persons examined by these centres. The Minister of Justice explained in response that the provisions exhaustively regulated the rights of persons whose personal data were to be processed by teams of court experts issuing opinions. It was thus not necessary to separately introduce analogous regulations to the statute on the teams of court experts issuing opinions.

The Commissioner for Human Rights submitted an intervention to the Minister of Finance concerning the planned implementation of a caller's voice recognition system in the National Tax Information Service. The Minister of Finance assured in response that during the pilot phase high security standards would be guaranteed in terms of storing



biometric data, which were specified in the policy of the secure storage of IT data in the systems of the Minister of Finance.

In an intervention to the Minister of Health, the Commissioner for Human Rights raised the issue of the lacking guarantee of the appropriate standard of the protection of personal data included in an electronic prescription sent at the e-mail address. The Minister of Health pointed out that the law required entities keeping databases to appropriately secure the processing of data, which also referred to the data submitted at the e-mail address indicated by the patient.

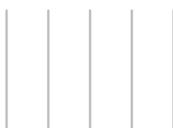
The Commissioner for Human Rights submitted an intervention to the President of the National Notary Council with regard to the obligation to disclose the amount of the remuneration charged by a notary for performed notarial activities in relation to establishing the amount of the monthly membership fee for the notary self-government. The Commissioner for Human Rights concluded that to the extent a notary performed notary activities and charged remuneration (notary fee), it was not a private person. Therefore, it could refer to the rights and freedoms of an individual in relation with its personal sphere. The President of the National Notary Council did not agree with the position presented in the intervention of the Commissioner for Human Rights, while pointing out that information concerning the notary fee did not concern the private sphere of the notary who performed a function of public confidence.

In an intervention to the Minister of Finance, the Commissioner for Human Rights pointed out the potential inconsistency with the Constitution of the provisions of the Fiscal Control Act to the extent they refer to the processing of data concerning health of patients treated by doctors against which a control proceedings had been initiated. The Minister of Finance did not share the position of the Commissioner for Human Rights.

The Commissioner for Human Rights requested the Minister of the Interior and Administration to provide information on how data concerning the in vitro fertilisation were protected when entered into the centralized civil status register. In response, the Minister assured that the protections used by the Ministry of the Interior and Administration ensured an appropriate protection of the data entered into the civil status register.

In an application to the Constitutional Tribunal, the Commissioner for Human Rights challenged the provisions on carrying out operational control by the Police and other special services. The limitation of materials submitted to the court to those justifying the need to order operational control makes the court issue a ruling exclusively on the basis of selectively chosen material submitted to the court by an organ applying for carrying out operational control. The interested party shall be also given the possibility to lodge a complaint, at least subsequently, against actions under operational control used against it.

The Commissioner for Human Rights submitted an intervention to the Minister of the Interior and Administration regarding the Police's making available recordings of CCTV systems on its Internet sites. The Commissioner for Human Rights pointed out the fact that the Polish legal system did not include any solutions that could be a legal basis empowering law enforcement authorities to process and publish materials of CCTV systems. The Minister of the Interior and Administration explained that the Police had been granted a number of authorizations in order to perform its statutory tasks, including the use of





video surveillance. In the opinion of the Minister, the provisions are a basis for the Police to register the image of events in public places with the use of technical measures, as well as to use personal data without the knowledge and consent of persons these data refer to in case the data refer inter alia to persons suspected of committing a crime prosecuted by public indictment, persons wanted and persons whose identity was unknown, and furthermore, it was necessary for the Police to perform its statutory tasks.

## E. Freedom of assembly

In an intervention to the Minister of Administration and Digitization, the Commissioner for Human Rights raised the issue concerning the implementation of the judgment of the Constitutional Tribunal of 18 October 2014 on the inconsistency of several provisions of the Law on Assemblies with the Constitution. On 24 July 2015, an amended act - Law on Assemblies was passed that was aimed at implementing the guidelines resulting from the judgments of the Constitutional Tribunal, as well as the European Court of Human Rights.

On the basis of incoming complaints regarding problems with registering associations in the National Court Register, the Commissioner for Human Rights submitted an intervention to the Marshal of the Sejm. In the opinion of the Commissioner for Human Rights, it was necessary to specify such a deadline in the regulations that would lay down clear time limits within which an application should be examined. The Marshal did not reply to the intervention before the expiry of the term of office of the Sejm.

## F. Right to education

In his interventions to the Minister of National Education, the Commissioner for Human Rights indicated the problem that self-government schools are more and more often replaced with public institutions managed by private entities. The Minister of National Education shared the position of the Commissioner for Human Rights, while informing that in order to prevent irrational changes in this area, the Ministry of National Education had initiated appropriate legislative works.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal on the provision of the Foreign Service Act to the extent it eliminates the refund of fees for children's education due to specific conditions of the host country if they were not able to attend a free nursery school in order to complete the compulsory one-year nursery education. The case is to be examined.

The Commissioner for Human Rights addressed interventions to the Minister of National Education, the Minister of Health and the Minister of Labour and Social Policy with regard to the requirement to possess obligatory vaccinations as a criterion in the admission procedure to some nursery schools and kindergarten that seemed not to be justified by law and might limit the possibility to use the constitutional right of equal access to education. The Minister of National Education agreed with the statement that the introduction of such



a requirement by some municipalities might be a limitation to the execution of the constitutional right of equal access to education. However, the Minister of Health informed about the performance of an information action under the heading “Have yourself vaccinated with a will to vaccinate” [PL “Zaszczep w sobie chęć szczepienia”] which also involved an information campaign. In accordance with the position of the Minister of Labour and Social Policy, in accordance with applicable law all entities running a nursery school or a children’s club may specify the conditions of the admission procedure independently. The voivode supervises the lawfulness of the resolution by which statutes of nursery schools and children’s clubs are adopted. Furthermore, the provisions of the Act on the municipal self-government give a right to everybody, whose legal interest or authorization was violated by a resolution, to appeal against the resolution to an administrative court, following an ineffective request to eliminate the violation.

The Commissioner for Human Rights submitted an application to the Constitutional Tribunal on the provisions governing the availability of artistic schools by regulation. The case is to be examined.

In interventions submitted to the Minister of National Education and the Director of the Central Examination Board, the Commissioner for Human Rights referred to complaints raised by graduates of post-gymnasium schools who took the matriculation examination in 2015 under the principles valid in previous years in relation to unequal treatment in comparison with graduates taking the matriculation examination under the new procedure. Both the Minister of National Education and the Director of the Central Examination Board agreed with the objections of the examinees.

The Commissioner for Human Rights applied to the Minister of National Education with regard to a change in the interpretation of the provisions on the principles of financing of youth education centres, as well as the lack of proper supervision over the centres hosting children staying under alternative care. The Minister partly shared the position of the Commissioner for Human Rights.

In another intervention to the Minister of National Education, the Commissioner for Human Rights requested to adopt a system regulation of video surveillance due to the adoption of the governmental programme of supporting organs running schools in the years 2015-2018 in order to ensure safe conditions of education, upbringing and care in schools “Safe+” [PL “Bezpieczna+”] that did not include provisions regarding monitoring at schools. The Minister informed that on 23 June 2015 the Council of Minister had adopted the discussed programme, while pointing out that it did not include any provisions on monitoring that had been questioned by the Inspector General for the Protection of Personal Data and non-governmental organizations.

The Commissioner for Human Rights addressed the Minister of Science and Higher Education on the amount of fees collected by higher education institutions during the admission procedure. The Minister did not share doubts expressed in the intervention of the Commissioner for Human Rights, while indicating the autonomy of higher education institutions in all areas of their operation, as well as establishing admission criteria.

In an intervention to the Minister of Science and Higher Education, the Commissioner for Human Rights addressed the problem of the criteria for granting scholarships by the





Minister of Science and Higher Education for excellent achievements in the academic year 2015/2016. The Minister did not share the position of the Commissioner for Human Rights and explained that amendments to the Minister's scholarships for excellent achievements would not introduce significant modifications to the conditions for granting such scholarships.

In an intervention to the Minister of National Education, the Commissioner for Human Rights took up the issue of the lack of regulation on the integrated system of qualifications in the Polish legal system. The act was finally passed on 22 December 2015.

## G. Voting rights

The Commissioner for Human Rights submitted an intervention to the State Electoral Commission, while claiming that the election to the European Parliament and the municipal election in 2014 highlighted the need to fundamentally reform the information and communication activity conducted by electoral authorities. In response to the intervention, the Chairman of the State Electoral Commission pointed out problems related to insufficient staff resources of the State Electoral Office and declared that activities would be conducted as far as possible.

As far as the adaptation of polling stations to the needs of voters with disabilities is concerned, the Commissioner for Human Rights submitted an intervention to the Chairman of the State Electoral Commission. Employees of the Office of the Commissioner for Human Rights made on-the-spot visits to polling stations with the status of being adapted to the needs of persons with disabilities, in the course of which several deficiencies were identified. The Commissioner for Human Rights requested the Chairman of the State Electoral Commission to take into account the possibility to take up measures aimed at ensuring the protection of voting rights of voters with disabilities. The Chairman of the State Electoral Commission thanked for the suggestions and recommendations included in the intervention, while pointing out at the same time that in practice the implementation of the proposals of the Commissioner for Human Rights required a decision to be taken by the Parliament. The Commissioner for Human Rights is to continue its activities in this area.

The Commissioner for Human Rights submitted a request to the President of the Republic of Poland to initiate necessary legislative changes regarding voting rights of incapacitated persons, including the possibility to amend relevant provisions of the Constitution. The intervention has not been responded so far.





## The most important issues in the field of criminal law





## A. Right to good legislation

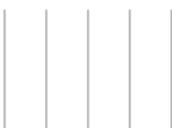
The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution of a provision of the Act on informing employees and performing consultations with them. In the provision questioned by the Commissioner for Human Rights, the legislator penalised the action consisting of disclosing data whose confidentiality had been reserved by the employer. The specification of the features of an offence was left to the employer. The provision being subject to the application is inconsistent with constitutional law, which lays down that everyone who committed an offence under threat of a penalty set out in the statute valid as of the date of committing the offence bears criminal liability, as well as with the constitutional principle of citizens' trust in the state and its law. The case is to be examined by the Constitutional Tribunal.

In an intervention to the Minister of Justice, the Commissioner for Human Rights asked for taking into account the possibility to take up an appropriate legislative initiative regarding the establishment of an appropriate *vacatio legis*, consistent with the principle of the protection of citizens' trust in the state and its law and decent legislation. The period between the promulgation and the entry into force of the Act on amending the Criminal Code and some other acts made the Commissioner for Human Rights raise objections regarding the fulfilment of constitutional standards. The Minister of Justice emphasized that the Act of 20 February 2015 on amending the Criminal Code and some other acts did not introduce any changes to the very model of a contradictory hearing while new solutions set out in the Act referred to various detailed matters with the necessity to correlate the date of the entry into force of the Act with the reform of the model of the Code of Criminal Procedure entering into force at that time.

The Commissioner for Human Rights called on the Minister of Justice to introduce a complex definition of tortures to and specify penalties for their use in the Criminal Code. In the opinion of the Commissioner for Human Rights, that did not apply only in practice, while allowing to prosecute perpetrators of such kind of crimes, but was also of symbolic significance. The postulated amendment of the Criminal Code would be an expression of Poland's respect of its international obligations, as well as a signal that the Polish state makes no allowance for any behaviour falling under the definition of tortures. The Minister of Justice did not agree with the stand of the Commissioner for Human Rights while claiming that the current criminal law regulations concerning the use of tortures are sufficient so that Poland may perform its international obligations.

## B. Right of defence

The Commissioner for Human Rights addressed the Minister of the Interior and Administration on the non-observance of the judgment of the Constitutional Tribunal by enforcement authorities, under which the Constitutional Tribunal found two provisions of the Code of Misdemeanour Procedure inconsistent with the Constitution to the extent





they omitted the right of a person against which there was a justified basis to prepare an application to punish it, to appoint a defence counsel at the stage of explanatory activities, as well as did not provide for its right of access to the file. The Minister of the Interior and Administration informed that until the date of the entrance into force of the new regulation including the judgment of the Constitutional Tribunal, prosecution authorities conducting a proceedings on the basis of the Code of Misdemeanour Procedure should directly apply the provision of the Constitution that gave them the right to perform material and formal defence in cases related to misdemeanours, including the right of access to the file of a person against which certain explanatory activities had to be undertaken due to the collected evidence in order to raise an accusation against the person.

The Constitutional Tribunal examined an application of the Commissioner for Human Rights for adjudicating the inconsistency of the provisions of the Code of Criminal Procedure with the constitutional right to defence and the right to court to the extent they do not guarantee the suspected/accused or its defence counsel the right to participate in the hearing of the court examining a complaint against a decision concerning the use of other coercive measures against it, excluding arrest and pre-trial detention. The Constitutional Tribunal adjudicated that the lack of guarantee of the right of the suspected or its defence counsel to participate in the hearing of the court examining a complaint against a decision concerning the use of preventive measures, excluding pre-trial detention and security on property, violates the constitutional right to court and the right to defence at each stage of the criminal proceedings.

The Commissioner for Human Rights declared to participate in a proceedings on the constitutional complaint regarding the lack of court control over the ruling of the prosecutor denying the participation of a proxy of a person not being a party to the preparatory proceedings. A person not being a party to the proceedings may appoint a proxy if its interests require so in the ongoing proceedings. On the other hand, the prosecutor may deny the participation of a proxy of a person not being a party to the proceedings in case the prosecutor concludes that it is not required to defend its interests. The prosecutor's decision denying the participation of a proxy of a person not being a party to the preparatory proceedings may be appealed against exclusively to the superior prosecutor. The case is to be examined by the Constitutional Tribunal.

### C. Costs of proceedings

The Commissioner for Human Rights declared to participate in a proceedings concerning joint constitutional complaints about the possibility to appeal against a ruling on costs of criminal proceedings to the court of second instance. The Commissioner for Human Rights emphasized that if the court of appeal were the first to adjudicate about costs of the criminal proceedings, there should be a possibility to appeal against its ruling to the court of second instance. In the opinion of the Commissioner for Human Rights, the questioned provision of the Code of Criminal Procedure was not consistent with the constitutional principle of equality before the law, the right to a fair and clear examination of the case and



the principle of two instances of the proceedings. The Constitutional Tribunal discontinued the proceedings due to the lack of necessity to issue a judgement as the objections raised under the examined constitutional complaints had already been decided upon within a different proceedings.

In an intervention to the Minister of Justice, the Commissioner for Human Rights raised the issue of the higher threshold of the refund of the lost earnings or income, as specified by the legislator, in relation to acting as a witness in the activities under the proceedings, at the request of a court or an authority conducting preparatory proceedings. There was a claim raised in the applications submitted to the Commissioner for Human Rights that due to the participation as a witness in the process activities under the court proceedings, the family budget was significantly reduced because of granting an excessively low compensation in the light of the maximum receivables for the lost earnings or income specified by the legislator. The Minister of Justice informed in response that it had requested the Minister of Finance to take a stand in this case. Having received a response, the Minister of Justice will submit its position to the Commissioner for Human Rights.

The Constitutional Tribunal examined an application of the Commissioner for Human Rights on the impossibility to appeal against a ruling on costs of criminal proceedings adjudicated by a court of appeal for the first time. The Constitutional Tribunal shared the opinion of the Commissioner for Human Rights and concluded that the questioned provision was inconsistent with the Constitution.

The Commissioner for Human Rights lodged an application with the Supreme Court for adjudicating on a legal issue concerning discrepancies in the jurisprudence of courts with regard to the refund of costs of appointing a chosen defence counsel in the case the accused is not partly found guilty or the proceedings is partly discontinued. The Supreme Court decided about the legal issue as claimed by the Commissioner for Human Rights. This means in practice that the accused, if it is not found partly guilty or the criminal proceedings is partly discontinued, will be able to claim a proportional refund of costs of the chosen defence counsel to be adjudicated against the State Treasury.

The Commissioner for Human Rights lodged an application with the Supreme Court for adopting a resolution aimed at explaining discrepancies existing in the jurisprudence with regard to the application of the so-called conditional pre-trial detention. In the justification accompanying the application, the Commissioner for Human Rights emphasized that a person shall be deprived of liberty on the basis of clear and precise provisions allowing for an immediate cancellation of the pre-trial detention by the time the court takes over a security on property. On 25 February 2016, the Supreme Court declined to adopt a resolution.

## D. Excessive length of proceedings

The excessive length of criminal proceedings, being a violation of the constitutional right to examine a case without unjustified delay, was subject of an intervention of the Commissioner for Human Rights to the Prosecutor General. The Prosecutor General informed that significant changes introduced to the provisions specifying formal requirements of the act





of indictment caused major problems in practice that were explained during trainings for prosecutors. In the opinion of the Prosecutor General, it was however possible to conclude that the effectiveness of the prosecutors' work remained at a comparable level so there was no threat that it might lead to an increase in the excessive length of proceedings. Subordinate prosecutors were also to receive an instruction with recommendations in order to shape a correct prosecution practice in the preparation of acts of indictment.

## E. Right to a fair trial

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution of a provision of the Code of Criminal Procedure to the extent it excludes the admissibility of raising a complaint against a decision issued on the basis of the provision of the Code of Criminal Procedure and referring to an assistant prosecutor. The assistant prosecutor may not participate in the proceedings if adjudicated so by the court by concluding that it is not an authorized person. It is not possible to appeal against the court's decision in this respect irrespective of the fact that the assistant prosecutor is deprived of the status of a party to the criminal proceedings. The case is to be examined by the Constitutional Tribunal.

The Commissioner for Human Rights declared participation in a proceedings before the Constitutional Tribunal on a question of law concerning the possibility to simultaneously impose – on the same person and for the same act – criminal liability in the form of a fine, restriction of liberty or imprisonment from 3 months up to 5 years, as well as a pecuniary penalty set out in the Act on the road transport. The Commissioner for Human Rights concluded that in that case the same act was factually penalised twice, which violated the principle *ne bis in idem* (the principle of not adjudicating twice in the same case) resulting from the provisions of the International Covenant on Civil and Political Rights and the provisions of Protocol No. 7 to Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the constitutional principle of the democratic state ruled by law. The case is to be examined by the Constitutional Tribunal.

## F. Personal freedom

The Commissioner for Human Rights was requested by the Helsinki Foundation for Human Rights to take up measures with regard to the application of the so-called conditional pre-trial detention. In relation to courts' doubts, as well as the significance of the concept for the defence of the right to personal freedom, the Commissioner for Human Rights applied to the Minister of Justice to consider the possibility to take up a relevant legislative initiative to propose appropriate normative changes that would solve problems regarding the use of the so-called conditional pre-trial detention. The Minister explained that it was not necessary to undertake any legislative changes in this respect on the basis of the performed analysis. The applicable provisions of the Code of Criminal Procedure



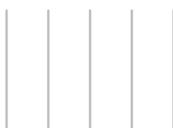
sufficiently specified results and the manner of proceedings in case the institution of conditional pre-trial detention is applied.

One of the concerns of the Commissioner for Human Rights is the issue of protracted pre-trial detentions, in particular their reasons, diagnosis and the scale of the problem. From the jurisprudence of the European Court of Human Rights results that the imprisonment of the accused person in the criminal proceedings is a factor that shall be taken into consideration in order to establish whether the requirement of a reasonable length of the proceedings has been complied with. The Commissioner for Human Rights requested the Minister of Justice to provide information about any and all cases in which the pre-trial detention exceeds two years while specifying the potential complexity of each case, as well as grounds and premises for further prolonging this measure. The National Council of the Judiciary pointed out that the applicable regulations providing for the individualisation of using preventive measures, including pre-trial detention, were sufficient.

In an application to the Constitutional Tribunal on the principles of adjudicating precautionary measures, the Commissioner for Human Rights questioned a provision of the Criminal Code imposing the obligation of the so-called offender profiling onto a court, i.e. specifying the degree of social harmfulness of a crime that may be committed by a perpetrator together with the probability of its committing in future. This means that the court's evaluation shall not focus on the act done by the perpetrator, but the expected offence that may not be committed at all. Similar objections refer to provisions of the Criminal Code and the Criminal Executive Code specifying that the adjudicated precautionary measure, including a stay in a psychiatric establishment, shall be applied upon serving the penalty of imprisonment. The Commissioner for Human Rights also questioned the solution set out in the Code of Criminal Procedure that does not require the court to hear the accused during a hearing before adjudicating a precautionary measure. The case is to be examined by the Constitutional Tribunal.

In an intervention to the Minister of Justice, the Commissioner for Human Rights asked for considering a legislative initiative in order to implement legal solutions guaranteeing the accused that the redress procedure shall be initiated yet before the issue of the final ruling in the trial. Everyone who has been deprived of liberty in an unlawful way has the right to receive compensation, as guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. In the opinion of the Minister of Justice, applicable regulations concerning compensation for unlawful imprisonment comply with the requirements of the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Commissioner for Human Rights addressed the Minister of Justice with regard to insane persons against which the court decided that they were to be placed in a psychiatric hospital. Upon the issue of the ruling, such persons should be interned in an appropriate facility and not stay in pre-trial detention facilities. This is not an appropriate facility for a mentally ill person requiring psychiatric treatment. The applicable regulation set out in the Code of Criminal Procedure is contradictory to the provisions of the Constitution and





the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commissioner for Human Rights is awaiting a response from the Minister.

In an intervention to the General Director of the Prison Service, the Commissioner for Human Rights raised the issue of the effective protection of the rights of imprisoned persons against which pecuniary injunction was used in penal facilities and pre-trial detention facilities – on the basis of the Act on the protection of mental health. It was established during a visit to one of the penal facilities that the use of pecuniary injunction involved humiliating and inhuman treatment of the imprisoned, violation of the rights of patients to care given in accordance with professionalism and accuracy, ignorance of procedures of using pecuniary injunction and deficiencies in keeping the documentation. The response given to the Commissioner for Human Rights did not refer to the problem as a system matter. Due to a significant scale of irregularities, the issue will be subject to further on-site examination in penitentiary institutions.

During a visit under the National Preventive Mechanism, it was established that medical examinations were not carried out for all the detained by the Police that were placed in facilities for the detained. On the other hand, in rulings against Poland the European Court of Human Rights accepts the responsibility of the Polish state for the existence of injuries by the detained, while assuming that they have been caused during their detention in the Police units, as the assumption may not be questioned. Polish legal regulations oblige only certain groups of the detained to do the tests. In 2015, the Police initiated the implementation of the document titled “Strategy of actions aimed at counteracting the violation of human rights by officers of the Police” [PL “Strategia działań nakierowanych na przeciwdziałanie naruszeniom praw człowieka przez funkcjonariuszy Policji”]. The Commissioner for Human Rights requested the Minister of the Interior and Administration to provide information on the stage of the implementation of the activities set out in the “Strategy...”, in particular with regard to medical examinations for the detained. As results from the response of the Minister, the actions taken by the Police, as described in the “Strategy...”, shall be strengthened by appropriately prepared medical documentation on medical examinations of each person detained by the Police. Otherwise, shall there be any bodily injuries identified at the moment the detained person is released, there will still be a presumption that they have been caused during the detention period. The Commissioner for Human Rights submitted another intervention to the Minister to provide detailed information on the actions undertaken by the Ministry in this area. The Commissioner for Human Rights is awaiting a response from the Minister.

## G. Safety of citizens

In the opinion of the Commissioner for Human Rights, the draft act on amending the Act on the Police and certain other acts, which was prepared by the Sejm Deputies, raises serious constitutional concerns. Drafted regulations allow for a deep intervention in human and civic rights and freedoms. Although the processed provisions are aimed at implementing the judgment of the Constitutional Tribunal, which accepted the postulated



changes, the adopted solutions do not fulfil the criteria set out therein. The raised objections lead to the conclusion that the draft act in its current shape requires significant changes ensuring compliance of drafted provisions with the constitutional standards. The Commissioner for Human Rights submitted an opinion on the consistency of draft provisions with the Constitution to the Marshal of the Sejm and the Marshal of the Senat. Despite of critical remarks of the Commissioner for Human Rights, the act was passed and entered into force.

## H. Road traffic

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms of provisions of the Road Traffic Law and the Act on the vehicle drivers. The challenged solution requiring a poviát governor (starost) to issue an administrative decision on confiscating a driving licence in the situation when a vehicle driver exceeded the maximum speed limit by over 50 km/h within a built-up area – being simultaneously liable for a misdemeanour – raises concerns in relation to the violation of the prohibition to punish one person twice for the same act. The confiscation of the driving licence seems to be a criminal and administrative sanction with similarities to a criminal measure of a driving ban, highly restrictive, interfering in a person's civic rights and freedoms. This is particularly visible in case of professional drivers or other persons for whom the possession of a driving licence is a necessary precondition for performing their professional duties. The case is to be examined by the Constitutional Tribunal.

In an intervention to the General Road Transport Inspector, the Commissioner for Human Rights raised the issue that the Road Transport Inspection did not attach any evidence in the form of a photograph taken by a safety camera and a declaration form sent to the owner of the vehicle to the report on the identified misdemeanour. The Inspector informed in response that there were final tests being carried out in the telecommunication and information system in the Automatic Road Traffic Monitoring Centre of the General Road Transport Inspectorate in order to launch an automatic shipment of photographs from the registering devices already with the first correspondence addressed to the owner of the vehicle, as postulated by the Commissioner for Human Rights. The automatic shipment is to be launched immediately upon the completion of testing.

The subject of an intervention of the Commissioner for Human Rights to the Minister of Health was the imprecise specification of citizens' obligations and officers' authorizations in the provisions concerning the conditions and manner of performing preventive tests on alcoholic strength in the body of vehicle drivers. In response, the Minister of Health shared the position of the Commissioner for Human Rights that the above mentioned provisions had to be precisely formulated as they referred to the constitutional rights and obligations of organs and citizens. Furthermore, they had to be specified by statute and not by regulation. Any matters concerning the authorizations of the Police, including the





performance of preventive (routine) tests on alcoholic strength in the body, might not be thus set out in the currently processed regulation of the Minister of Health that lays down the conditions and manner of carrying out examinations necessary to establish the alcoholic strength in the body of a person suspected of committing a crime or misdemeanour under the influence of alcohol.

In an application to the Constitutional Tribunal, the Commissioner for Human Rights questioned regulations allowing for charging a fee for the exchange of a driving licence in case the exchange is due to changes in address data caused by actions of organs of the public authorities. The case is to be examined by the Constitutional Tribunal.

The Commissioner for Human Rights submitted an intervention to the Minister of Infrastructure and Development with regard to provisions of the regulation concerning the issue of documents confirming rights to drive vehicles that lay down conditions for issuing a replacement of the driving licence document contrary to the relevant act. The Minister accepted the remarks of the Commissioner for Human Rights. The new regulation is being elaborated while taking into account the remarks of the Commissioner for Human Rights. The Commissioner for Human Rights is awaiting their completion.

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

In an intervention to the General Director of the Prison Service, the Commissioner for Human Rights requested to inform district directors of the Prison Service about the content of the judgment of the European Court of Human Rights in the case *Milik vs. Poland* and the resulting need to change the practice used by Polish penitentiary institutions in terms of strip searches that shall be carried out exclusively against those prisoners who are a real threat to the security or order in the penal facility due to their attitude or behaviour. The Commissioner for Human Rights is awaiting a response in this case.

The subject of an intervention of the Commissioner for Human Rights to the General Director of the Prison Service was the change in the manner of handling dangerous prisoners by officers of the Prison Service, and at the same time the successful implementation of the judgments of the European Court of Human Rights in cases *Piechowicz v. Poland* and *Horych v. Poland*. The very amendment of the provisions of the Criminal Executive Code is not sufficient. It is necessary to apply them in practice and precisely justify the grounds for qualifying as or prolonging the status of a dangerous prisoner, as well as to abandon certain elements of the regime for dangerous prisoners. As the General Director of the Prison Service did not comment specifically on the presented problem, the Commissioner for Human Rights is awaiting additional explanations in the case.

In an application to the Constitutional Tribunal, the Commissioner for Human Rights questioned provisions of the Criminal Executive Code concerning the submission of motions, complaints and requests by the sentenced to organs enforcing the ruling. The Constitution lays down that everybody shall have the right to submit petitions, motions and complaints to organs of the public authorities in the public or own interest or in the interest of another person upon its consent. With regard to a certain category of entities, i.e.



persons sentenced in their relationships with the organs enforcing the ruling, the legislator introduced however additional conditions for raising a complaint (filing a motion) in the form of documenting one's claims or proposals, as well as using a correct language. If these conditions are not fulfilled, the complaint is not examined. The case is to be examined by the Constitutional Tribunal.

The Commissioner for Human Rights addressed the General Director of the Prison Service on the need to enable prisoners to receive food in accordance with nutritional norms established in the former unit once transferred to a new penitentiary unit. This refers to a religious, vegetarian or any other individual diet. The former diet is not re-established until the submission of a motion by a prisoner and its approval by the director of the respective unit, which usually takes a number of days. In the opinion of the Commissioner for Human Rights, the practice shall be changed due to the respect of the rights to religious freedom of prisoners. The Director informed that measures had been undertaken in order to standardize the regulation on the manner of handling in order ensure that prisoners receive food in accordance with nutritional norms established in the former penitentiary unit. The obligation to receive an approval of the director for receiving food in accordance with religious and cultural requirements should refer exclusively to the situations when the requested kind of food had never been prepared by the penitentiary unit the prisoner was transferred to.

In another intervention to the General Director of the Prison Service, the Commissioner for Human Rights requested to take up measures that would efficiently protect the right to defence of a sentenced person serving a disciplinary penalty in the form of being placed in a special isolated cell. The penalty must not limit its right to communicate with the defence counsel appointed in the executory proceedings. The Director shared the position of the Commissioner for Human Rights and informed about an intervention with a reminder about the above mentioned principle having been sent to district directors of the Prison Service.

Taking into consideration analysed cases, the Commissioner for Human Rights requested the General Director of the Prison Service to ensure that the Prison Service would address a penitentiary judge exercising supervision over the legality and correctness of executing the penalty of imprisonment and pre-trial detention in case there might be doubts concerning the possibility to keep a detained person with physical disabilities in penitentiary isolation. The Director shared the position of the Commissioner for Human Rights on the necessity to intensify investment, organizational and educational measures aimed at further improving the conditions of the stay of persons with disabilities in penitentiary units. Every time the penitentiary units and their internal medical are modernized, actions are taken to adapt them to the needs of persons with disabilities.

In an intervention to the Minister of Justice, the Commissioner for Human Rights requested to consider the legislative initiative in order to increase the level of employment of the sentenced for a remuneration. The Minister informed in response that the Ministry of Justice was carrying out legislative works in order to increase the employment level for and without a remuneration.





The problem related to the necessity to regulate the electronic surveillance system was subject to an intervention to the Minister of Justice. The Commissioner for Human Rights requested the Minister to ensure that the provisions of the Criminal Code and the Criminal Executive Code were amended so that the electronic surveillance system might be used as frequently as possible, including as a manner of serving a penalty of imprisonment under the electronic surveillance system, i.e. in the manner in place before the amendment of the Codes as of 1 July 2015. The Minister agreed with the Commissioner for Human Rights and informed about urgent legislative works being carried out in this respect.

The unavailability of a Polish version of the Nelson Mandela Rules, i.e. the UN Standard Minimum Rules for the Treatment of Prisoners amended in 2015, on the Internet sites of the Ministry and of the Prison Service was signalled to the Minister of Justice. The Minister was also requested to disseminate knowledge about their content among all officers of the Prison Service. The Commissioner for Human Rights emphasized that it seemed to be justified to analyse provisions of the Criminal Executive Code in terms of the potential necessity to implement the content of the Rules to applicable regulations. The Minister shared the opinion on the significance of the Rules and pointed out that a detailed analysis of the consistency of Polish law with the Rules was currently being performed. The contents will also be published on chosen Internet sites.

The Commissioner for Human Rights requested the Minister of Justice to supplement provisions of the regulation on the register of medical establishments, including psychiatric ones, serving for executing the pre-trial detention and the conditions of securing the establishments so that the register, apart from prison medical establishments, also included establishments functioning outside the prison system and fulfilling the conditions set out in the regulation. The fact that there were no “non-prison” medical entities could mean that the pre-trial detention of a person, which had to be placed in a medical establishment, would be executed exclusively in prisons that often lack appropriate medical services. The Minister did not share the position of the Commissioner for Human Rights.

In an intervention to the General Director of the Prison Service on the situation of persons with mental or psychical disabilities in penitentiary units, the Commissioner for Human Rights emphasized that the Prison Service was obliged to inform courts about the stay in prison of a person whose mental illness or degree of psychical and physical development did not allow to achieve the objective of the penalty set out in the Criminal Executive Code. Additionally, such a situation should be signalled to the penitentiary judges exercising supervision over the legality and correctness of executing the penalty of imprisonment and pre-trial detention. The Director shared the opinion of the Commissioner for Human Rights while expressing a will to further cooperate in that respect.

Under the National Preventive Mechanism, in 2015 there were preventive visits to penal facilities and pre-trial detention facilities that focused on the situation of imprisoned persons with disabilities. It was established on the basis of the findings that no procedure of strip searches of persons with disabilities was adopted in penitentiary units that would take into account the grade and kind of disability. Furthermore, some of the visited facilities did not adopt any principles of evacuation for persons with disabilities or they were hardly mentioned in security instructions. The Commissioner for Human Rights also emphasized



that none of the vehicles used by the Prison Services in the visited facilities was adapted to the transport of persons with disabilities moving on wheelchairs. The Commissioner for Human Rights requested the General Director of the Prison Service to take a stand on the raised issues. The Director confirmed that there were no special procedures concerning strip search of persons with disabilities. However, the Director pointed out that means of transport purchased after 2013 were equipped with safety belts for those escorted. With regard to the procedures of evacuation of the imprisoned, the Director informed that the fire security instructions drawn up by managers of individual facilities, regulating the above mentioned issue, contained provisions of the relevant regulation. The concerns of the Commissioner for Human Rights resulted from the recognition that the evacuation of persons with disabilities was organized in the same way as the evacuation of the imprisoned without disabilities. In the majority of penitentiary unites, there were neither facilitations enabling persons with moving disabilities to move independently, in particular between floors, nor alarm sounder systems for the deaf, nor texture paths for the blind. The Commissioner for Human Rights requested the Chief Commandant of the State Fire Service to take a stand in this respect. The Commandant informed in response that it was possible to include the demands of the Commissioner for Human Rights in the fire security instructions as long as they were not contradictory to the fundamental function of the affected buildings. As the situation was not in place, the Commissioner for Human Rights requested the General Director of the Prison Service once again to consider the presented issue. In the opinion of the Director, it was not necessary to specify more in detail internal procedures of individual units in order to improve the security of the imprisoned persons with disabilities, as from the analyses of fires during the last ten years resulted that nobody had suffered any injuries as a result of that events.

An intervention of the Commissioner for Human Rights to the Prime Minister was devoted to a system problem involving the transfer of the duty to provide care for intoxicated persons onto the Police in the situation when facilities for the detained of the Police were not properly adapted to. There were no doctors employed in facilities for the detained who would be able to provide the sobering persons with emergency medical care in case there was a threat to their life or health. On the other hand, self-governmental authorities were closing down, mainly for financial reasons, sobering-up stating. The intervention was addressed by the Minister of Health who partly shared the position of the Commissioner for Human Rights.

In the course of preventive visits to detention centres of the Military Gendarmerie under the National Preventive Mechanism, it was established that there was no statutory empowerment of the staff of the detention centres of the Military Gendarmerie to carry out strip searches of persons placed in there. Strip searches of those persons were carried out exclusively on the basis of the Regulation of the Minister of National Defence on the detention centres. This raises significant doubts from the point of view of the constitutionally established limits of interference in the sphere of an individual's freedom. The Commissioner for Human Rights requested the Minister of National Defence to consider the possibility to undertake works on amending the provisions so that they would ensure the protection of the constitutional rights and freedoms. The Minister informed that the issue of strip





searches carried out by different entities in terms of the fulfilment of the requirements of the constitutional protection of the right to physical integrity was currently examined by the Constitutional Tribunal; therefore, the Minister found it justified to suspend any works on the amendment of the provisions as long as the Constitutional Tribunal did not issue a binding ruling on the regulation of searches of persons, carrying out of strip searches and searches of vehicles by officers of the public services.

In the course of preventive visits under the National Preventive Mechanism, it was established that a common practice of that kind of units was to order the detained to undress naked and submit them to checking. From the explanations of the officers resulted that it was necessary to carry out such a checking due to the necessity to ensure the security of the detained person, as well as the whole unit. The current manner of carrying out the checking interferes with the constitutional right to physical integrity and personal freedom which may be limited or denied exclusively under the principles and the mode specified by statute. The above mentioned matter was included in the content of draft assumptions to the Act on amending the Act on the Police. The Commissioner for Human Rights addressed the Minister of the Interior and Administration to provide information on the status of the legislative process in terms of the mentioned changes. The Minister informed in response that there were still works being carried out on the draft assumptions to the draft Act on the Police aimed at inter alia regulating the carrying out of strip searches by statute.

An intervention of the Commissioner for Human Rights to the Police Commander in Chief was devoted to the problem of the appropriate adaptation of the infrastructure of rooms for the detained or those forcefully transferred for sobering up in organizational units of the Police to the needs of persons with disabilities. In the opinion of the Commissioner for Human Rights, it was necessary to create at least one cell (room) in these facilities for persons moving on wheelchairs or persons with very limited mobility. It was also necessary to adapt the nearby infrastructure, including cells (rooms), so that they would enable the detained with moving disabilities to execute their right to contact their defence counsels, as well as the right to appropriate living conditions, including the independent use of sanitary facilities etc. In August 2015, the Police Commander in Chief submitted an intervention to voivodship Police Commanders and the Warsaw Police Commander while ordering them to undertake possible measures, including in financial terms, in order to subsequently adapt their facilities so that there would be at least one room for the detained in each Police station which should fulfil technical conditions for placing persons with moving disabilities or persons moving on wheelchairs in there. In the course of preventive visits under the National Preventive Mechanism to facilities for the detained of the Border Guard, particular attention was given to strip searches of the detained. Representatives of the National Preventive Mechanism pointed out that the scope of activities performed by officers of the Border Guard, including the ordering of a detained person to undress naked, taking the form of a personal search, made it impossible to perform the search on the basis of an act being lower in rank than a statute. Such a deep interference in the right to privacy, physical integrity and personal freedom may be laid down exclusively by a statute and applicable exclusively in specific situations. The Commissioner for Human Rights requested the Minister of the Interior and Administration to initiate legislative



works in that respect. The Minister explained that the activity of searching a detained person by officers of the Border Guard in order to collect objects took place exclusively when justified by security concerns, as well as emphasized that in accordance with the Border Guard Act, officers were obliged to respect the dignity and observe human and civic rights and freedoms while performing their professional duties. In this case, subsequent correspondence is being exchanged with the Minister of the Interior and Administration.

The Commissioner for Human Rights addressed the lack of respect for the rights of persons placed in the National Centre for the Prevention of Antisocial Behaviour in Gostynin to both the Minister of Health, supervising the medical centre, and the Minister of Justice who prepared a draft statute on the handling of persons with mental disorders that posed a threat to the life, health or sexual freedom of other persons. As emphasized by the Commissioner for Human Rights, if a person deemed to pose a threat was deprived from its freedom for preventive reasons and was placed in the Centre for an indefinite period of time, it did not mean that the person may be simultaneously deprived from its constitutional rights without any legal basis. The Commissioner for Human Rights pointed out that such limitations had happened under the current legal order. Therefore, the Commissioner for Human Rights called for taking up a legislative initiative and regulating the rights and obligations of persons placed in the Centre, as well as to create a legal basis to limit them. The Minister of Health did not agree with the opinion of the Commissioner for Human Rights. The Commissioner for Human Rights is awaiting a response from the Minister.

## J. Protection of juveniles' rights

The Commissioner for Human Rights submitted an intervention to the Minister of Justice while calling for an urgent amendment to the Act on proceedings in juvenile cases due to the necessity to implement the judgment of the European Court of Human Rights in case *Grabowski v. Poland*. In accordance with the former court practice, after a juvenile case had been directed to a hearing, courts did not evaluate whether a minor had to stay further in a shelter for juveniles. Its stay was prolonged without a court's decision and the possibility to request the adopted measure to be annulled, which violated the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Commissioner for Human Rights is awaiting a position in this respect.

In the report on the activities of the National Preventive Mechanism in the years 2012-2014, the Commissioner for Human Rights signalled the lack of solutions concerning pregnant minors and minor mothers and their new-born children to be a system problem. The current situation of pregnant minors and mothers upon childbirth violates the constitutional legal order. In the opinion of the Commissioner for Human Rights, resocialization centres shall possess houses or wards, or at least rooms for mothers and children, where minor mothers could stay with their children in appropriate conditions. The Commissioner for Human Rights requested the Chairman of the Legislative Committee of the Senat to take up a legislative initiative in order to ensure appropriate conditions and care for pregnant minors and minor mothers and their new-born children in resocialization





centres. As the Chairman of the Legislative Committee of the Senat had not responded, the Commissioner for Human Rights resubmitted its request to take a stand on the signalled issue. The Commissioner for Human Rights did not receive any response until the last day of the 8. term of office of the Senat of the Republic of Poland. Due to the fact that the parliament's works were discontinued, a response in this matter shall not be expected. The situation of minors in the above mentioned scope will be a matter of concern for the Commissioner for Human Rights until appropriate regulations have been prepared.

In the course of preventive visits under the National Preventive Mechanism to correctional centres and shelters for juvenile, it was identified that examinations for alcohol and psychotropic substances were carried out without an accurate legal basis. The Commissioner for Human Rights pointed out that no examinations should be carried out without a clear statutory authorization for persons performing such an examination. The Commissioner for Human Rights addressed the Minister of Justice to take up a legislative initiative in order to specify by statute which entities are authorized to carry out examinations for alcohol, narcotic drugs or psychotropic substances in the body of the minors staying in correctional centres and shelters for juveniles, as well as to specify by implementing acts the conditions and manner of performing such examinations, the manner of their documentation and verification. The Minister of Justice informed that assumptions of the draft act on amending the Act on proceedings in juvenile cases and certain other acts had been prepared. The amendment was aimed at ensuring inter alia the consistency with the Constitution of the solutions concerning the rights and obligations of the minor placed in correctional centres and shelters for juveniles.

The Rules and Regulations of the Police Children's Centre allow for a visit of parents, a defence counsel or guardian, however, exclusively upon consent of a court, a manager of the centre or a policeman conducting the particular case. The Commissioner for Human Rights is of the opinion that it is necessary to amend the provisions of the Rules and Regulations in such a way that a minor placed in a Police children's centre is provided with immediate assistance of a lawyer. The Commissioner for Human Rights submitted a request to the Minister of the Interior and Administration to take up measures in order to amend the questioned provisions. The Minister agreed with the arguments raised by the Commissioner for Human Rights in the intervention. The Minister also pointed out that the legal provision making a visit of defence counsel dependent on the consent of the court, manager of the centre or policeman conducting the particular case was not justified in the context of procedural guarantees available to a minor in terms of its right to defence. The Ministry of the Interior and Administration declared to initiate measures in order to amend the provision of the Rules and Regulations.

In the course of preventive visits under the National Preventive Mechanism, several issues were identified that were important from the point of view of the protection of the rights of minors and require an intervention of the legislator. The problems were reported by the Commissioner for Human Rights to the Minister of Justice in the interventions concerning the use of video monitoring in facilities for minors, strip searches of minors, the stay of minor mothers in resocialization centres, the performance of tests for alcohol, narcotic drugs or psychotropic substances against pupils of centres for juveniles, or the



procedure of prolonging the stay of minors in a shelter for minors. The Commissioner for Human Rights requested the Minister to provide information on the status of the legislative process with regard to the above mentioned changes. The case remains a matter of concern for the Commissioner for Human Rights.

Findings of the National Preventive Mechanism raise concerns regarding the establishment of an effective mechanism for submitting complaints by children staying in resocialization centres and shelters for juveniles, Police children's centres and youth education centres. Current procedures do not ensure the protection against potential adverse consequences of submitting a complaint or the protection against further harm inflicted on children by the perpetrator. The Commissioner for Human Rights requested the Commissioner for Children's Rights to enter into cooperation in order to work out standards concerning the submission of complaints by children deprived of liberty.

## K. Protection of the rights of victims of crimes

The Commissioner for Human Rights initiated actions concerning the informing of victims of crimes about the possibility to claim compensation. In the course of analysing cases, it was established that template information sheets about rights of the disadvantaged used by the Prosecutor's Office contained information about the possibility for victims of crimes to claim compensation on the basis of the Act on the statutory compensation for victims of certain crimes, while template information sheets used by the Police units could not contain such information. The Commissioner for Human Rights submitted a request to the Minister of Justice to consider the need to supplement the template form with information about the rights to claim compensation and to inform about the taken stand. The Minister assured that the welfare of victims of crimes was one of the priorities and the steady objective of the taken actions, as well as informed that an Act on amending the Criminal Code and certain other acts was passed that *inter alia* extended the scope of the written information sheet about the rights and obligations of the disadvantaged.

While working for the rights of victims of crimes, including domestic violence, the Commissioner for Human Rights pointed out the template form "Information sheet for persons affected by domestic violence" [PL "Pouczenie dla osób dotkniętych przemocą w rodzinie"] that was used under the procedure "Blue Cards" [PL "Niebieskie Karty"]. The form is an annex to the regulation of the Council of Ministers concerning the procedure "Blue Cards" and template forms "Blue Card" issued on the basis of the Act on the prevention of domestic violence. The Commissioner for Human Rights submitted an intervention to the Minister of Labour and Social Policy while requesting information about whether the Ministry had initiated works (and potentially about when they were to be completed) in order to adapt the template form "Blue Card" to the provisions of the Criminal Code. The Minister confirmed that in relation to the amendments made to the Criminal Code the form "Blue Card - B" would need to be changed.

The Commissioner for Human Rights submitted an intervention to the Minister of Justice on ensuring the protection of all children participating in a criminal proceedings





by creating appropriate conditions for their questioning, including the avoidance of multiple questionings. The demands of the Commissioner for Human Rights were implemented in the course of following amendments to the Code of Criminal Procedure to a large extent. However, special principles of questioning children are still in place, excluding one exception, until they reach the age of 15 years. In turn, it is consequently specified in international regulations that a person under the age of 18 years is deemed to be a child. In a response to the intervention of the Commissioner for Human Rights, the Minister of Justice concluded that the regulations specified in the Code of Criminal Procedure fully complied with the standards of the EU law while allowing for audio-visual recording of the hearing of a child aged between 15 and 18 years. Furthermore, Polish law explicitly exceeds beyond the requirements of the Directive of the EU while introducing an obligatory audio-visual registration of the hearing of children aged up to 15 years.

The Commissioner for Human Rights submitted an intervention to the Minister of Health, the President of the Supreme Medical Council and the General Director of the Prison Service by requesting them to extend the curriculum of medical studies and professional development trainings for physicians and medical staff employed in penal facilities and pre-trial detention centres with guidelines specified in the so-called Istanbul Protocol, a UN guidebook concerning methods of effective examination and documentation of tortures and other forms of brutal, inhumane and degrading treatment or punishment. International law obliges Poland to undertake effective measures aimed at preventing tortures and other forms of brutal, inhumane and degrading treatment. All addressees of the intervention favourably addressed the demand of the Commissioner for Human Rights.

In an intervention to the Minister of Justice, the Commissioner for Human Rights requested to start a legislative procedure in order to supplement applicable legal regulations with regard to the access of persons affected by crimes to information that may be of significance for them. Statutory regulations do not cover the situation of persons experiencing harm caused by perpetrators against whom a protective measures was adjudicated in the form of placing them in a psychiatric establishment. The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings was not fully implemented in the Polish legal system. The Minister of Justice shared the opinion of the Commissioner for Human Rights and informed about legislative works carried out according to the demands of the Commissioner for Human Rights.

One of the urgent tasks strengthening the guarantees of full respect for the rights of immigrants staying in facilities for foreigners, as well as coming to Poland from countries of the Middle East, is to prepare handling procedures aimed at identifying among them victims of violence, tortures or other forms of inhumane treatment they could have experienced in their countries of origin or during their journeys. The implementation of appropriate solutions in this respect is a condition for fulfilling the obligation under the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment by the Polish state, which consists of creating a complex programme to support and rehabilitate persons being victims of tortures or other forms of inhuman treatment. The Commissioner for Human Rights requested the Minister of the Interior and Administration to prepare and implement a procedure based on the Istanbul Protocol.



The Minister explained that the Border Guard used the “Principles for the Border Guard to handle foreigners requiring special treatment” [PL “Zasady postępowania Straży Granicznej z cudzoziemcami wymagającymi szczególnego traktowania”], including inter alia victims of violence, tortures or other forms of inhumane treatment. Information provided by the Minister will be verified by representatives of the National Preventive Mechanisms during visits to detention facilities.





**The most important issues in the field of labour law, social security and uniformed services**





## A. Issues in the field of labour law

The Commissioner for Human Rights declared participation in a proceedings before the Constitutional Court concerning questions of law of the District Court in G. In the opinion of the Commissioner for Human Rights, a provision of the Act on the employment of temporary workers is contrary to the constitutional principle of equality before the law and the right to a fair and public hearing of a case by a competent court without unnecessary delay to the extent it does not provide for the right to select a court of competent territorial jurisdiction to examine claims of a temporary worker. The provision of the Act of the employment of temporary workers, which was subject to the question of law, does not allow a temporary worker to select a competent court to protect its employee rights. The protection may be performed exclusively before a court of competent jurisdiction over the registered office of a temporary work agency, which may often lead to the abandonment of raising due claims due to difficulties in the access to the court. In the opinion of the Commissioner for Human Rights, the questioned provision also leads to the violation of the principle of equal treatment of employees in terms of their right to select a court of competent territorial jurisdiction. The Commissioner for Human Rights is currently awaiting a trial date to be announced by the Constitutional Tribunal.

The Commissioner for Human Rights requested the Minister of Family, Labour and Social Policy to take a stand on the provisions concerning the protection of persons reporting irregularities in the public interest, i.e. the so-called whistle-blowers (signallers, exposers). The Commissioner for Human Rights is of the opinion that the protection of whistle-blowers shall not be limited exclusively to persons employed under employment contracts, but shall also cover persons employed under civil law contracts and those being self-employed. These groups are currently not entitled even to a minimal protection employees are entitled to. The scope of such a protection shall be broad and cover both the period before concluding the employment contract and after its expiry. If employees report irregularities, they usually fall into a conflict with their employer (supervisor), and in consequence risk the termination of the employment contract by serving or without serving a notice. The current legal regulations concerning the principles of reporting irregularities and the protection of whistle-blowers are not only dispersed in different legal acts, but above all less than effective, in particular with regard to the protection against retaliation. It seems to be necessary to use experiences gathered by institutions and non-governmental organizations that deal with the above mentioned problems. The Commissioner for Human Rights is awaiting a response from the Minister of Family, Labour and Social Policy.

The Commissioner for Human Rights applied to the Prime Minister with regard to the need to implement mechanisms to protect employment under civil law contracts and extend the competences of the Labour Inspectorate in terms of supervision and control over such type of employment. In the intervention, the Commissioner for Human Rights emphasized the large scale of employment under civil law contracts on the labour market in Poland. The phenomenon is a reaction to fluctuations in the demand for labour and higher employment costs. It takes the form of carrying out a paid activity not only by concluding contracts for services or contracts for a specific work, as well as by self-employment, which





means in the majority of cases that the employer commissions external contractors, being physical persons running a business activity, to perform selected tasks. Such entrepreneurs are often former employees employed under outsourcing contracts due to the necessity to reduce labour costs.

The Minister of Family, Labour and Social Policy presented in response a draft act on amending the Act on the minimum wage and the Act on the National Labour Inspectorate. The draft act is aimed at making a difference on the labour market by combating the abuse of civil law contracts and the implementation of the protection of persons receiving a remuneration at the lowest level.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal concerning overtime work. The European Social Charter, which was ratified by Poland, lays down an obligation to recognize the right of employees to an increased rate of remuneration for overtime work, subject to exceptions in specific situations. The Committee of Independent Experts, a control organ of the Council of Europe, stated that the remuneration for overtime work may take the form of holidays instead of an increased remuneration, but its amount shall be higher than the number of overtime hours worked. The Committee found the deprivation of the right to allowances for overtime work to be consistent with the European Social Charter only if this refers to employees holding management positions and high-ranking public officials. From the evaluation performed by the Commissioner for Human Rights results that the inconsistency with the European Social Charter refers to the provisions of the Labour Code mentioned in the application that referred to granting holidays at the request of an employee in a higher number of hours that factually worked overtime, as well as the Act on the Civil Service, the Act on the employees of the self-governmental authorities, the Act on the Foreign Service, the Act on the employees of the state authorities, the Act on the Supreme Audit Office and the Act on the National Labour Inspectorate. The Commissioner for Human Rights is currently awaiting a trial date to be announced by the Constitutional Tribunal.

The Commissioner for Human Rights submitted an intervention to the Minister of Justice concerning the employment of temporary workers by courts. The practice to employ temporary workers to provide services for common courts may raise constitutional concerns; furthermore, by omitting requirements specified in the Act on the employees of courts and the Prosecutor's Office and the Law on the Common Courts System, it may result in downgrading the rank and authority of the justice system. The Minister explained that due to the pressure on public finances in recent years significant cuts in expenditures were made in the whole budget of the state, which made it impossible to fully meet reported staffing needs. The fact that temporary workers provide services on the above mentioned positions did neither adversely affect the security of the performance of tasks imposed on individual units of the justice system, nor led to downgrading its rank and authority. It was not possible to immediately abandon the employment of temporary workers by courts without decreasing the efficiency of the functioning of the courts. The problem is subject to further analysis by the Commissioner for Human Rights.



## B. Right to exercise the profession

In an intervention to the Minister of Health, the Commissioner for Human Rights pointed out that the applicable provisions did not lay down a transparent procedure and form of recognizing a break in practising the medical profession by a physician. The objections of the Commissioner for Human Rights were not considered by the Minister being of the opinion that the provisions of the Medical Profession Act defined the practising of the medical profession in a sufficiently precise manner. As suggested by the Minister, a solution of the existing problems required the Supreme Medical Council to issue a stand on the interpretation of the provisions concerning the recognition a five-year period of practising the medical profession by a general practitioner and dental practitioner, which contributed to the improvement of the procedure of directing practitioners to a training in relation to a break in practising a medical profession.

In an intervention to the Minister of Agriculture and Rural Development, the Commissioner for Human Rights drew attention to concerns regarding the principles of verifying the consistency with the factual state of applications for an entry into the registers of medical establishments for animals. The problem is that persons who have not accepted the position of a manager of a medical establishment and have been employed exclusively as a veterinarian are reported in the applications as managers of such medical establishments (which is related to the responsibility of managers as specified inter alia in the Pharmaceutical Law and the Act on the protection of animal health and the prevention of infectious diseases. The Minister assured to take up works in order to identify causes of the irregularities mentioned in the intervention of the Commissioner for Human Rights, as well as the scope and direction of potential legislative changes.

The Commissioner for Human Rights declared participation in a proceedings before the Constitutional Tribunal concerning certain provisions of the Regulation of the Minister of Health concerning the standards of medical handling in the field of anaesthesia and intensive care for establishments running a medical activity. The Commissioner for Human Rights is of the opinion that the questioned regulations limit the former authorizations of practitioners possessing the first degree specialization in the field of w anaesthesia and intensive care, while violating the constitutional principle of the protection of the acquired rights at the same time. The limitation was also introduced by exceeding the statutory authorization. The Commissioner for Human Rights is currently awaiting a trial date to be announced.

The conditions of employment of employees of the self-governmental authorities, as specified in the Act on the employees of the self-governmental authorities, differ depending on the basis for establishing the employment relationship, and additionally on the position in case of employees employed under employment contracts. The Commissioner for Human Rights submitted an intervention to the Minister of Administration and Digitization while pointing out that the minimum qualification requirements for employment on the particular position had been specified in an annex to the Regulation of the Council of Ministers concerning the remuneration of employees of the self-governmental authorities. The Act requires exclusively employees of the self-governmental authorities employed





under employment contracts on management positions to possess at least three years of professional experience or run an economic activity for at least three years in a field which is consistent with the requirements specified for the particular position. In the opinion of the Commissioner for Human Rights, the adopted solution leads to the differentiation of treatment of applicants for employment in self-governmental units, as the principle to take into account the running of an economic activity by specifying professional qualifications applies exclusively to employees employed on management positions in public authorities. The Commissioner for Human Rights concludes that it is necessary to amend the Act on the employees of the self-governmental authorities in order to take into account the period of employment in other forms by specifying professional qualifications, in particular periods of running an economic activity, while the principle shall be applicable to all applicants for employment, irrespective of the basis for establishing the employment relationship. In response, the Minister of Administration and Digitization explained that it was not necessary to take any actions as the regulation of the Act on the employees of the self-governmental authorities was not contradictory to the constitutional principle of equality.

An intervention to the Minister of Justice was devoted to the matter of unequal treatment of persons who have not graduated from the National School of Judiciary and Public Prosecution in terms of access to the position of a court secretary. The Minister of Justice informed that the current model of acquiring legal professions assumed a free movement of staff between the professions and equal treatment of several ways to acquire them.

In an intervention to the Minister of Finance, the Commissioner for Human Rights continued the issue of changes concerning certified auditors and their disciplinary responsibility. The Minister of Finance informed that the implementation of the EU provisions required complex changes to the Act on certified auditors, inter alia in terms of the regulations on disciplinary proceedings. At the moment, new provisions are being incorporated into Polish law.

The Commissioner for Human Rights submitted an intervention to the Minister of Justice with regard to the fact that managers of the Civil Registry Offices did not accept documents translated by foreign sworn translators, which led to challenging the principle of citizen's trust in the state and its law. The issue was resolved by amending the Law on Civil Status Records which entered into force as of 1 March 2015.

## C. Right to social security

In a proceedings instituted by a constitutional complaint in a case with participation of the Commissioner for Human Rights, the Constitutional Tribunal examined the consistency with the Constitution of the principles of determining the amount of retirement pension and disability allowance premiums for employees who were employed abroad by Polish employers. The Constitutional Tribunal accepted the complaint and adjudicated that the questioned provisions of the Regulation of the Minister of Labour and Social Policy concerning the determination of the amount of retirement pension and disability allowance premiums were inconsistent with the Constitution. In the opinion of the Constitutional



Tribunal, the questioned provision of the Regulation exceeds the statutory authorization as in case the income of an employee employed abroad by a Polish employer is lower than the average remuneration in the national economy, it introduces such a modification to the principles of determining the amount of premiums that the amount becomes higher than the basis set out in the Act on the Social Insurance System. Furthermore, the Constitutional Tribunal adjudicated that in case such a modification to the principles of determining the amount of premiums is introduced by exceeding the statutory authorization that the amount becomes higher than the basis set out in the Act on the Social Insurance System, this leads to the situation when employees and employers are charged with costs of an increased social insurance premium and therefore interferes in the right of ownership. However, the Commissioner for Human Rights is of the opinion that there is no justification to maintain an unconstitutional regulation in the legal system beyond the period which may be necessary to prepare appropriate amendments to the provisions. Therefore, the Commissioner for Human Rights applied to the Minister of Family, Labour and Social Policy to take up appropriate legislative measures. The Minister informed about the Ministry's ongoing analyses of the formula and direction of amending the provision of the regulation within the scope questioned by the Constitutional Tribunal. If amended, the provision will have a significant impact on the financial situation of the insured, payers of premiums, as well as on the Social Insurance Fund. Therefore, it is necessary to perform an in-depth analysis and achieve the broadest possible consensus in order to work out the best solution.

The Commissioner for Human Rights submitted an application to the Supreme Court for adjudicating on a legal issue concerning the determination of the amount of mixed retirement pensions. In the opinion of the Commissioner for Human Rights, it would be advisable to accept the interpretation taking into account conversion rates for mining work by determining the mixed retirement pensions on the basis of the linguistic and purposive interpretation. The Supreme Court concluded in its resolution that by calculating the amount of retirement pensions from the Social Insurance Fund conversion rates for mining work were used as specified in the Act. In the opinion of the Supreme Court, although the linguistic interpretation did not give explicit results, it allowed, if supported by the purposive interpretation, to take a position that the provisions referred to the calculation of retirement pensions for those insured who would acquire the right to retirement pensions under the system of a defined benefit in relation with the fulfilment of the employment conditions and who were not able to exercise the right due to the change of the retirement benefit system. The amount of the retirement pensions they were entitled to consisted of a specific percentage of the retirement pensions they would be entitled to under the system of a defined benefit, as well as a specific percentage of the retirement benefits they would be entitled to under the system of a defined premium. As the provisions of the Retirement Pension Act referred to those insured who have fulfilled the conditions giving the right to retirement pensions under the defined benefit system, it was beyond any doubts that by calculating the benefits, it would be also necessary to take into account a provision of the Act on the determination of the amount of the retirement pensions that allowed to apply certain conversion rates for mining work.





The complaints submitted to the Commissioner for Human Rights revealed a problem concerning the protection of retirees and pensioners receiving the lowest benefits. The Commissioner for Human Rights submitted an intervention to the Minister of Family, Labour and Social Policy. In the opinion of the Commissioner for Human Rights, it is necessary to amend the principles of determining the amounts of retirement pensions and disability allowances that are free from deductions and enforcement. The limits of deductions and amounts free from deductions in case of the enforcement of payments from the remuneration were determined in the provisions of the Labour Code. The Act on the retirement pensions and disability allowances from the Social Insurance Fund does not specify analogous limitations. It is not possible to justify the differentiation between the situation of a debtor living on income from a gainful employment and the situation of a debtor living on income from retirement pensions and disability allowances. It seems that in the absence of such a differentiation, elderly persons and those less resourceful would be better protected against unfair commercial practices of enterprises, banks and para-banking entities. In the opinion of the Commissioner for Human Rights, the legislator, while shaping the system of deductions from retirement pensions and disability allowances, shall take into account the principle of social justice, which is strictly linked with human dignity. The amount free from deductions is to allow a minimum necessary income to be left for meeting basic needs. The applicable income thresholds that entitle to apply for a social care benefit are equivalent to the minimum subsistence income below which there is a biological threat to the life and development of an individual. If the income criteria, which are aimed at ensuring the minimum subsistence income, are compared with the amount free from deductions and enforcement of payments, as specified in the Retirement Pension Act, it turns out that the free amount being equivalent to 50% of the lowest retirement pension or disability allowance is lower than the poverty threshold. The Minister of Family, Labour and Social Policy informed that the matter of the amount of retirement benefits and disability allowances free from deductions would be soon subject to the legislative works of the Senat of the Republic of Poland. The Minister agreed with the argument that the protection of the persons receiving benefits against adverse consequences of the enforcement proceedings had to be increased.

The Constitutional Tribunal sitting in a full bench examined the combined applications of the Commissioner for Human Rights and the President of the Republic of Poland concerning the consistency with the Constitution of the reform of the Open Pension Funds. In the opinion of the Commissioner for Human Rights, the implemented changes violated the principle of citizens' trust in the state and its law, as well as constituted a disproportionate limitation of the principle of the freedom of choice. The Constitutional Tribunal did not share the objections of the Commissioner for Human Rights. In the evaluation of the Constitutional Tribunal, the mechanism of submitting declarations about transferring premiums either to the Open Pension Funds or a sub-account in the Social Insurance Institution was consistent with the principle of citizens' trust in the state. This involved the right of the insured to co-decide about the extent to which they wanted to participate in an amended capital part of the retirement pension system. The Constitutional Tribunal also emphasized the transfer of assets corresponding to redeemed settlement units did



not involve a deterioration in the value of the assets. Financial resources, which had been formerly managed by the Open Pension Funds, were transferred to the Social Insurance Institution in the same amount. The performed accounting operation did not entail any adverse effects for the insured. The right to social security related to reaching the retirement age does not mean a right to receive a benefit in a specific amount determined according to one and fixed model of financing. The legislator disposes of quite a broad freedom to manage the resources in order to ensure the possibility to execute the right to retirement for the insured. However, it is not possible to assume at the same time that the provisions determining the conditions for acquiring the right will remain unchanged. The legislator must react, including due to the need to ensure the execution of the right to retirement, to changes of circumstances in which the retirement pension system functions. It shall also take into account different factors, in particular economic and social ones, which may affect the manner of ensuring social security to citizens in the appropriately long perspective after they have reached the retirement age.

The Commissioner for Human Rights pointed out the lack of possibilities to acquire the right to pre-retirement pension benefits by persons entitled to care benefits in relation to providing care for a person with disabilities who have lost care benefits due to circumstances beyond their control, e.g. due to the death of the person they have cared for. The Commissioner for Human Rights submitted a request to the Minister of Family, Labour and Social Policy to present a stand on the raised matters and the absence of legislative works aimed at implementing the judgments of the Constitutional Tribunal concerning the right of the carers of persons with disabilities to a care benefit. The Commissioner for Human Rights pointed out that the provisions of the Act on the pre-retirement pension benefits allow for providing social protection coverage for persons in the age of 56-61 years who can prove a long-term contributory period and lose their job through no fault of their own after staying a minimum of six months in employment. Long-term carers of persons with disabilities, who are affected by the loss of the right to receive care benefits due to reasons beyond their control, have the right to expect assistance to be provided by the state at the same level as persons losing employment due to reason beyond the control of the employee as a minimum. In the opinion of the Commissioner for Human Rights, it is necessary to consider the possibility to supplement the Act on the pre-retirement pension benefits with a legal basis allowing the carer to acquire the right to a pre-retirement pension benefit after it has lost care benefits due to the death of the patient. In response, the Minister informed that analyses were being performed with regard to changing the shape of the system of assistance for persons with disabilities and their families, as well as carers of persons with disabilities. The matter raised by the Commissioner for Human Rights concerning the acquisition of the right to pre-retirement pension benefits and unemployment benefits by persons who have received care benefits and have lost the right thereto due to circumstances beyond control of carers of persons with disabilities is also subject to analytical works. A team for working out system solutions for carers of persons with disabilities was appointed by the Ministry of Family, Labour and Social Policy in order to prepare appropriate legislative amendments concerning in particular the implementation of the judgments of the Constitutional Tribunal.



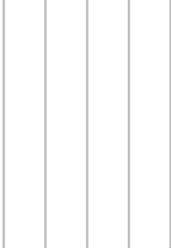


## D. Protection of the rights of the family

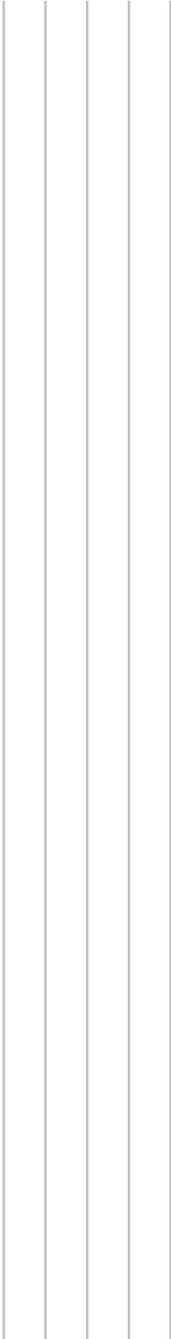
Due to existing limitations in the access to benefits from the Children's Maintenance Fund, a large number of children are deprived of any assistance of the state, while the whole burden of their maintenance has been transferred on one of their parents. The Commissioner for Human Rights submitted a request to the Prime Minister to undertake measures in order to efficiently secure the rights of parents and children entitled to children's maintenance. In the opinion of the Commissioner for Human Rights, children's maintenance benefits for children being creditors is one of the areas financial limitations shall not apply to. Furthermore, women are usually single parents bringing up children, while the fact that children's maintenance is not paid and organs of the state authorities are not effective in its enforcement may constitute a discrimination and unequal treatment. In the response given by the Minister of Family, Labour and Social Policy on behalf of the Prime Minister, it was pointed out that benefits paid from the Children's Maintenance Fund were financed from the state budget irrespective of the assumptions that the state authorities were to collect them from the debtors. Due to the ineffectiveness of the enforcement proceedings, it is currently possible to direct this form of assistance to all those entitled to children's maintenance who do not receive the benefits. The increase or change of the income criterion is not being considered at the moment. Neither is it planned to increase the acquired amount of the benefits. In agreement with the Commissioner for Children's Rights, the Commissioner for Human Rights appointed a team of experts in order to work out draft system solutions aimed at improving the system securing the rights of parents and children.

In interventions submitted to the Minister of National Education, the Minister of Development and the Minister of the Economy, the Commissioner for Human Rights pointed out the absence of actions to be taken by appropriate authorities in order to create a legislation protecting children and teenagers against brutality and violence in computer games. The Minister of National Education informed that the Centre for Education Development had prepared a guidebook for parents that was devoted to matters related to computer games. The aim of the guidebook was to increase parents' and teachers' knowledge about computer games and to increase their awareness of consequences of their use by children. The Minister of the Economy informed in turn that the Electronic Economy Department ordered a report on the status of computer games in Poland. Having analysed the report, the Minister of the Economy will evaluate the effectiveness of currently existing solutions, mechanisms of classification and labelling of computer games. In response, the Minister of Development submitted the above mentioned report.





**The most important issues in the field of the protection  
of the rights of soldiers and public services officers**





The Constitutional Tribunal examined an application of the Commissioner for Human Rights concerning the inconsistency with the constitutional right to safe and healthy working conditions of the following statutes: the Act on the Police, the Act on the Border Guard, the Act on the Internal Security Agency, the Act on the Foreign Intelligence Agency, the Act on the Central Anti-Corruption Bureau, the Act on the service of officers of the Military Counterintelligence Service, the Military Intelligence Service and the act on the Customs Service. None of the above mentioned professional pragmatics of officers did not specify the manner the right may be executed or the resulting obligations for the employer. The Constitutional Tribunal adjudicated the inconsistency with the Constitution of the provisions questioned by the Commissioner for Human Rights while postponing their final expiry date by 12 months. The Commissioner for Human Rights is to monitor legislative works related to the implementation of the above mentioned judgment.

An intervention of the Commissioner for Human Rights to the Minister of National Defence was devoted to the rejection of the payment of a pecuniary benefit as a compensation of the lost remuneration for the period a person employed under an order contract was performing military exercises. In accordance with the Act on the common obligation to defend the Republic of Poland, the benefit is due exclusively to persons receiving remuneration under the employment or service relationship or income from the conducted economic or agricultural activity they could receive during the period of performing military exercises. The provisions do not cover army reservists who are employed under order contracts. In the opinion of the Commissioner for Human Rights, the applicable regulation, while omitting army reservists employed under order contracts during the period of performing military exercises, violates their right to equal treatment in terms of compensation of the lost remuneration. In the evaluation of the Minister, the order contract is a form of employment and, in consequence, it may not be treated as equivalent to the employment contract or other forms of employment that are set out in the Labour Code. Therefore, the violation of the constitutional principle of equal treatment is not in place. The case remains a matter of concern for the Commissioner for Human Rights.

In an intervention to the Prime Minister, the Commissioner for Human Rights addressed the insufficient legal protection of persons disclosing irregularities (the so-called whistle-blowers) in the uniformed services. In practice, it may turn out that in retaliation for reporting irregularities, the officer may be assigned to a lower official position, a different organizational unit or dismissed from service. A certain form of protection is provided by a provision of the Act on the Commissioner for Human Rights which allows the Commissioner for Human Rights to refuse to disclose the surname and other personal data of the whistle-blower, including towards organs of the public authorities, if the Commissioner for Human Rights finds it indispensable to protect the freedoms, rights and interests of the individual. The commonly applicable provisions do not lay down any legal means to effectively protect whistle-blowers against retaliation. The case remains a matter of concern for the Commissioner for Human Rights.

The amendment of the Act on the Police entered into force as of 9 October 2014 while allowing, but not obliging, to suspend a policeman in the performance of official duties against whom a subsidiary indictment is raised. In the legal system, there are still





appropriate provisions regarding the professional pragmatics of officers of the uniformed services reporting to other ministries, e.g. the provisions of the Act on the Central Anti-Corruption Bureau. The necessity to amend the provisions of one professional pragmatics does not reflect the amendment of a different, equally troublesome, regulation, which may lead to unequal treatment of particular groups of employees. If it is necessary to amend the statutory provisions, it would be necessary to consider the possibility to review related regulations. The Commissioner for Human Rights submitted a request to the Prime Minister to consider the possibility to improve the government legislative process within the above mentioned scope, as well as to take up a legislative initiative to amend regulations ordering to obligatorily suspend officers of the remaining uniformed services in the performance of their official duties in case a subsidiary indictment is raised by a disadvantaged person. The Vice-President of the Government Legislation Centre informed that the Government Legislation Centre would start works to prepare a draft act introducing a facultative suspension of officers of the uniformed services in the performance of their official duties. Once prepared, the draft act will be submitted to Chancellery of the Prime Minister for its further processing.

An intervention of the Commissioner for Human Rights to the Minister of Infrastructure and Development was devoted to the issue concerning the inconsistency with the Act on the railway transport of a provision of the Regulation of the Minister of Infrastructure concerning the detailed conditions to be fulfilled by officers of the Railroad Security Guard, the principles of evaluating the mental and physical service capacity and the mode and units authorized to determine the incapacity. The questioned provision of the Regulation lays down a different frequency of periodic examinations to be performed by officers of the Railroad Security Guard depending on the type of their position. In the opinion of the Commissioner for Human Rights, the analysis of a provision of the Act on the road transport authorizing to issue a regulation is not an explicit basis to conclude that the statutory authorization may be a basis to divide officers between those employed on administrative positions and the remaining ones employed on operational positions. The Act does not include any provisions in this respect, which may lead to the conclusion that the regulation does not implement it, but regulates matters excluded therefrom. In the light of the jurisprudence of the Constitutional Tribunal, this may be a basis to conclude the inconsistency of the Regulation with the Constitution. The Minister informed the Commissioner for Human Rights that in the performance of upcoming works on amending the questioned Regulation it would be proposed to abandon the division of officers of the Railroad Security Guard between those employed on administrative and operational positions. For safety reasons, it is advisable to maintain the age criterion for this service on which the frequency of examinations shall depend. Such a solution will be consistent with the idea of the EU regulation concerning health requirements.

In an intervention to the Minister of Labour and Social Policy, the Commissioner for Human Rights pointed out that non-governmental organizations providing assistance to veterans did not have legal means to acquire the status of a public-benefit organization. Public tasks mentioned in the Act on the public-benefit activity and volunteering did not include the above mentioned activity for veterans. If an additional public tasks,



i.e. “the activity for veterans”, is introduced to the Act, on one hand, this will significantly contribute to the improvement of the situation of veterans, on the other hand, this will provide non-governmental organization with the possibility to reasonably support those in a difficult situation. The Minister announced that before starting potential appropriate legislative activities the Minister would submit a request to the Minister of Justice to take a stand on the impossibility to acquire the status of a public-benefit organization in case non-governmental organizations providing assistance to veterans. The current position of the Ministry is that the activity for veterans may be conducted in the framework of activities for combatants.

An intervention of the Commissioner for Human Rights to the Minister of the Interior and Administration was devoted to the impossibility to challenge minutes of a disciplinary meeting during which supervisors conclude that a policeman has committed a minor disciplinary offence. The Commissioner for Human Rights emphasized that in case the supervisor abandons the institution of a disciplinary proceedings and holding of a disciplinary meeting, the employer does not guarantee the right to defence for the officer. Minutes of a disciplinary meeting are important for evaluating an employee, granting discretionary prizes, assigning to service in a foreign country, or directing to professional trainings. In case the accused is deprived of the possibility to do specific actions in the course of the disciplinary proceedings, there may be concerns as to the consistency of the situation with the constitutional right to defence. The Minister informed that the mentioned matter would be analysed in the framework of works on assumptions of the draft Act on the Police. The problem remains a matter of concern for the Commissioner for Human Rights.





## The most important issues in the field of civil law





## A. Right to good legislation

In 2015, the course of legislative works in matters signalled to the competent authorities of the state in previous years was still being monitored, inter alia with regard to the change in the system of support and care over legally (also partially) incapacitated persons, changes within the enforcement proceedings, increasing the protection guarantee of the minimum subsistence income in case of the enforcement of payments from the bank account, the status of evidence from family diagnostic and consultation centre opinions in other proceedings (especially in divorce and care proceedings) than those conducted based on the Act on Proceedings in Cases Involving Juveniles, the cooperative law, particularly the residential cooperative, and the protection of occupants' rights.

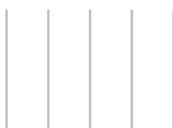
Addressees of the interventions of the Commissioner for Human Rights agreed with the demands of changes proposed by the Commissioner for Human Rights with numerous issues having been finally resolved in the course of passing appropriate statutes. However, some problems have not been resolved by modifying unclear regulations (the minimum distance of parking lots from buildings, provisions of the statute on residential cooperatives). Important failures still remain by defining statutory authorisations to issue implementing acts. For example, the authorisation set out in the Construction Law to specify a limited scope of building qualifications by regulation is, in the opinion of the Commissioner for Human Rights, of a flat-rate nature. Therefore, the Commissioner for Human Rights joined the relevant proceedings before the Constitutional Tribunal.

## B. Right to court in civil proceedings

In 2015, the Act on free legal assistance and legal education was passed. Raised by the Commissioner for Human Rights since 2014, the demands to extend the access of the poor to legal assistance also at the pre-litigation stage were thereby finally implemented. A statute was passed that amended several other statutes in order to encourage the resolution of disputes in an amicable manner and promote mediation inter alia in civil-law matters, which the Commissioner for Human Rights had strived for since 2011. The amendment introduces the possibility to release the poor from costs of mediation under the release from court costs.

The Commissioner for Human Rights declared participation in two proceedings before the Constitutional Tribunal that referred to the provisions establishing the rates of remuneration of lawyers (advocates) in cases related to social insurance benefits and labour law. In the opinion of the Commissioner for Human Rights, if the rates are established at a very low level, this does not guarantee the reimbursement of legal assistance costs to the successful party in the trial and thereby limits the constitutional right to court.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution of a provision laying down a 5-year period from the date the judgment acquired the authority of a final decision to reopen the proceedings also in the cases in which the ruling was based on a provision





that the Constitutional Tribunal afterwards found to be inconsistent with the Constitution. The statutory period to reopen the proceedings, in the opinion of the Commissioner for Human Rights, limits the right to court for those persons in whose cases the judgment was announced more than 5 years before the judgment of the Constitutional Tribunal.

The Commissioner for Human Rights was still considering concerns as to whether the applicable provisions of the civil-law procedure concerning the release from court costs or the appointment of a proxy from office protected the privacy of persons applying for such assistance in a satisfactory manner. The Commissioner for Human Rights requested the Inspector General for the Protection of Personal Data to take a stand in this respect.

The Minister of Justice received remarks concerning the institution of the so-called objections on record that was regulated in the Code of Civil Procedure. In the opinion of the Commissioner for Human Rights, the institution, while also applicable to parties to the proceedings handling without being assisted by a professional proxy, might violate the guarantee that the case should be examined in a fair manner under a fair procedure. The Minister responded that potential differences in the interpretation of the provision should be removed in the jurisdiction mode.

Furthermore, the Commissioner for Human Rights signalled the need to thoroughly specify the role of curators in the civil-procedure provisions in terms of conducting community interviews in the enforcement proceedings in guardianship-related cases. The case remains a matter of concern for the Commissioner for Human Rights.

### C. Right to use cultural property

The Constitutional Tribunal concluded, following the position of the Commissioner for Human Rights, the inconsistency with the Constitution of the provisions of the Copyright Law that imposed the obligation to pay high compensation for using foreign works without being authorized to do that.

### D. Protection of rights of the family

The Commissioner for Human Rights was monitoring legislative works on the legal regulation of the status of evidence from family diagnostic and consultation centre opinions in other family cases than those conducted based on the Act on Proceedings in Cases Involving Juveniles. The case was finally regulated by statute by the end of the 7. term of office of the Sejm.

The Commissioner for Human Rights also advised the Minister of Health about the need to regulate the principles of performing DNA tests by specialized companies. In the opinion of the Commissioner for Human Rights, the matters required urgent regulation by statute.

The Commissioner for Human Rights addressed the matter that the minimum age of marriage is differentiated by law according to sex; for women, who have attained the age



of 16 years, the court may issue a marriage permit in specific situations, while men have been deprived of such a possibility. The regulation may be questioned as discriminatory on the ground of sex and additionally inconsistent with the recommendations resulting from Poland's international obligations. The Minister of Justice agreed with the concerns raised by the Commissioner for Human Rights and undertook to solve the problem under the upcoming and more thorough amendment of the Family and Guardianship Code.

Furthermore, the Commissioner for Human Rights submitted interventions to the Minister of Justice with regard to the disturbing and increasing phenomenon of the so-called parental abductions, when one of the parents abducts a child against a will and without knowledge of the other parent, while preventing it from any contact with its relatives. From the given response results that current provisions are not expected to be amended in terms of penalising such behaviour, while the Ministry is working on draft assumptions to the amendment in order to inter alia introduce regulations aimed at increasing the effectiveness of the implementation of rulings ordering a child to be taken back by force.

## E. Rights of Persons with Disabilities

The Commissioner for Human Rights pointed out the necessity to adapt outdated provisions to current international standards in the field of the protection of the rights of persons with disabilities, in particular to the Convention ratified by Poland. It is necessary to amend the Civil Code and change the concept of legal and partial incapacitation that has been in place for years together with the structuring of the matter of the representation of the rights of such persons in the system (including in the course of proceedings before organs of the state authorities), which is key for their functioning in the society. The Commissioner for Human Rights has been monitoring the course of legislative works in this field.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Constitution of the provisions introducing as a rule the prohibition to marriage for persons with health impairments. A person may be deprived of the right to marriage on the basis of ambiguous premises of a mental illness and mental retardation that do not reflect the modern medical expertise. The premises for the court to issue a consent to marriage for such persons are of a discriminatory nature.

## F. Protection of citizens' housing rights

Action has still been taken in order to signal a lack of the protection against the so-called "eviction onto the street" being analogous to the one under the enforcement proceedings and subject to the Code of Civil Procedure in case the removal from a housing takes place under the administrative enforcement proceedings. Finally, the Commissioner for Human Rights filed a respective application with the Constitutional Tribunal for adjudicating that a provision of the Act on the enforcement proceedings in administration is inconsistent with the Constitution to the extent it authorizes an enforcement officer conducting the





enforcement proceedings from the property or facility (premises) serving for satisfying the housing needs of the debtor to remove the debtor and its household members with no new premises having been identified for rehousing and the debtor not being able to satisfy its housing needs.

In 2015, the amendment of the provisions finally led to the removal of concerns as to the legal admissibility of the transfer of the right of ownership to the premises constructed by using financial resources from the credit granted by Bank Gospodarstwa Krajowego from the National Housing Fund onto persons holding the cooperative tenant right to the premises, for which the Commissioner for Human Rights had called for several years.

The Commissioner for Human Rights also addressed the difficulties in the implementation of the right to vote on the resolutions of a housing cooperative by co-owners, in particular the premises consisting of a multi-space parking garage, and the problem was finally resolved by amending the Act on the ownership of premises.

Statutory solutions were also adopted in order to at least partially resolve the problem concerning the legal status of tenants of former company-owned housings which had been sold to other entities due to the absence of explicit legal regulations years ago. The Commissioner for Human Rights had been calling for the introduction of such regulations for years and finally in 2015 municipalities were given the authorization to receive co-financing from the state for the potential “repurchasing” of such housings from other entities.

By amending the Act on the protection of the rights of tenants, the deadline was extended by two years within which a municipality was obliged to ensure a substitute housing for a tenant who was forced to leave an apartment being the ownership of a private entity ordered to be demolished due to a poor technical state. The Commissioner for Human Rights called for an urgent need to extend the deadline due to the fact that the original provision imposed the obligation onto the municipality exclusively until the end of 2015, while the situation on the housing market had unfortunately not improved so much that all “private” owners were able to ensure substitute housings for tenants in the above mentioned situation on their own.

Furthermore, the Commissioner for Human Rights also raised a demand for amending the provisions of the Act on the protection of the rights of tenants in order to oblige municipalities to take into account specific needs of persons with disabilities while determining provisions of the local law in terms of managing the municipal housing stocks. Housings offered to such persons shall be architectonically adapted to fit their disabilities. The Minister of Infrastructure and Construction assured the demand to be analysed in the course of works on the amendment of the Act.

In the submitted interventions, the Commissioner for Human Rights raised a variety of problems related to the housing cooperative movement, inter alia the lack of the appropriate protection of members of housing cooperatives against being burdened with the responsibility for the cooperative’s obligations, inter alia due to the possibility to enforce debts of the cooperative from monthly rental payments made by members of the cooperative to cover maintenance and exploitation costs of their apartments. The Commissioner for Human Rights also signalled an unfavourable legal status of persons holding cooperative ownership rights to premises in case the cooperative’s debts were secured by mortgages



on premises in which such apartments were located. The Commissioner for Human Rights raised the problem that persons holding rights to premises were deprived of the membership of cooperatives in an unauthorized way by referring directly to the judgment of the Constitutional Tribunal of 5 February 2015 (ref. no. K 60/13), although the provisions of the Act did not specify a legal basis for depriving them of their membership of a cooperative. Correspondence was exchanged with regard to the unfavourable legal status of persons holding cooperative ownership rights to a premises located in a building with an unregulated legal status. From the jurisprudence of the courts results that in such a situation an entitled person is merely entitled to a promise of the right to a premise, which leads in practice to a significant limitation of the authorizations of such persons and multiple legal complications. Unfortunately, none of the signalled problems related to housing cooperative movement has been resolved yet.

## G. Protection of property rights and property management

The activity of the Commissioner for Human Rights focused to a large extent on matters related to the protection of the rights of owners of premises facing various types of limitations due to the performance of public tasks by organs of the state authorities. The Commissioner for Human Rights took up actions in the fields lacking balance between the protection of the rights of owners and the need to protect the public interest. The Commissioner for Human Rights exchanged correspondence with the Minister of Culture and Natural Heritage with regard to the faulty procedure of entering premises into the municipal register of monuments with the owner not being informed about the performed entry. Finally, the Commissioner for Human Rights declared participation in the relevant proceedings before the Constitutional Tribunal and presented a position that the solutions adopted by the legislator were contradictory to the constitutional guarantees of the protection of the ownership as they provided for a complete lack of transparency of actions resulting in the limitation of the ownership right to premises for a public purpose.

The Commissioner for Human Rights also joined the proceedings before the Constitutional Tribunal in a case concerning the inconsistency with the Constitution of a provision of the Geological and Mining Law, which deprived owners of properties located outside of an existing or planned mining area or sites of geological works of the status of a party to the concession proceedings. The questioned regulation favours only one group of entities, i.e. entrepreneurs applying for a concession. The provision limits means of the protection of the ownership right in an excessive and disproportionate way.

The Commissioner for Human Rights also signalled the lack of an effective protection of the rights of owners of premises to develop them – if an application for establishing the development conditions refers to an area covered by an obligation to prepare a local area development plan, the administrative proceedings to establish the development conditions are suspended until the adoption of the plan. Under such circumstances, an investor may be deprived of, even for an indefinite period, the right to develop the premise with no planning action being taken by the municipality. It is commonly known that there are delays





of years in the field of adopting local area development plans. The case remains a matter of concern for the Commissioner for Human Rights.

The Commissioner for Human Rights submitted an intervention to the Minister of Infrastructure and Construction with regard to the necessity to introduce compensations for owners of private land for their being reserved for many years for future infrastructural investments. The obligation results from the judgment of the Constitutional Tribunal, as well as several judgments of the European Court of Human Rights in Strasbourg in the so-called cases *Skibińscy v. Poland*.

The Constitutional Tribunal concluded over a year ago (on the application of the Commissioner for Human Rights) that the provisions of the Act of 2013 on the local planning and development were inconsistent with the Constitution as they granted a compensation (or the right to repurchase) if the particular premise was assigned such a purpose in the local area development plans which hindered or prevented it from being used in the former way. The compensation is due exclusively when such a burdensome purpose was specified in the plans adopted later than 1 January 1995. Otherwise, neither a compensation nor a claim to repurchase is due – even if the relevant premise cannot be used in a rational way for years. The problem of the so-called “premises reserved for investments” has not been resolved in Poland for years, which has been pointed out by the Commissioner for Human Rights since the very entrance into force of new provisions, i.e. since mid-1990. In the opinion of the Commissioner for Human Rights, it is now necessary to work out a system and coherent approach to the problem, as the reservation of private premises for burdensome public purposes, which may sometimes fully exclude the possibility to use them by their owners, may result not only from the provisions of the spatial planning, but also e.g. from the provision on the environmental protection, flood protection or on the protection of monuments.

The Commissioner for Human Rights continued works on the so-called regulatory proceedings that are set out in the statutes laying down relations between the state and individual churches and religious associations, and above all the impossibility to question rulings issued by the so-called regulatory committees before a court. Unfortunately, an intervention of the Commissioner for Human Rights to the Minister of Digitization and Administration calling for aligning the faulty legislative solutions with the constitutional guarantees of the protection of violated freedoms and rights has not been addressed yet.

Many cases taken up by the Commissioner for Human Rights refer to the reprivatization. In 2015, the Commissioner for Human Rights signalled the necessity to pass an appropriate regulation in the administrative procedure in order to implement the judgment of the Constitutional Court in case ref. no. P 46/13. The Constitutional Court adjudicated the inconsistency with the Constitution with regard to a provision that allowed to conclude a decision to be invalid if issued in severe violation of law, including if a very long period had lapsed since the issue of the decision and the decision was a basis for acquiring the right. In the opinion of the Commissioner for Human Rights, it is thus necessary to urgently introduce a time limit for submitting application for concluding invalidity of an administrative decision that is in a severe violation of law. The Commissioner for Human Rights also pointed out that due to the lack of a complex reprivatization statute the institution



of concluding invalidity of decisions is currently the basic instrument by which former owners of premises, deprived of their property in the course of post-war nationalisation and expropriation may claim their rights.

The Commissioner for Human Rights joined a proceedings before the Constitutional Tribunal on the inconsistency with the Constitution of a provision of the Act on the property management which does not allow the former owner of a premises to cause its return if acquired for public purposes in the course of pre-expropriation negotiations and afterwards found to be unnecessary for the public purposes justifying its purchase.

The Constitutional Tribunal adjudicated the inconsistency with the Constitution of a provision that allows for the return of the very shares in an expropriated property, if the property has become unnecessary for expropriation purposes. In this case, the Constitutional Tribunal fully shared the opinion of the Commissioner for Human Rights presented in the course of the proceedings.

A question of law submitted to the Supreme Court and the position of the Commissioner for Human Rights in a proceedings before the Supreme Administrative Court instituted by a question of law of the General Prosecutor were devoted to problems related to the admissibility to return expropriated properties to their former owner in case they have been disposed from the public property stock with the objective of the expropriation not having been achieved.

The Commissioner for Human Rights joined a proceedings before the Constitutional Tribunal on the amount of remuneration for using a property being a part of the Agricultural Property Stock State Treasury without a legal title. In the opinion of the Commissioner for Human Rights, the questioned provision imposing the obligation to pay the remuneration in an amount that is five times higher than the starting rental fee violates the constitutional guarantees of the protection of the ownership right by violating the principle of equal treatment. The State Treasury gained a privileged position in the legal system contrary to the Constitution, while the legal situation of no-contract owners of agricultural land in the possession of other parties was differentiated in an inappropriate way.

The Constitutional Tribunal concluded a provision to be inconsistent with the Constitution that introduced a differentiation of the protection level of entities entitled under authors' economic rights in comparison with users who had violated the copyrights intentionally by providing entities holding the copyrights with the right to claim a payment of three times the amount of the remuneration due to the authorized entity for granting permission for the use of a work. The Constitutional Tribunal fully agreed with the stand of the Commissioner for Human Rights that such a limitation was inconsistent with the principle of equal protection of property rights.

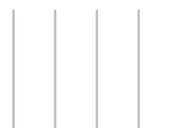
## H. Enforcement of payments

In 2015, the demand of the Commissioner for Human Rights to introduce explicit principles that ensure the so-called minimum subsistence income to a debtor in case pecuniary payments are enforced from the debtor's bank account was fulfilled. Cash deposited on





a bank account will be thus free from seizure, in any calendar month the seizure is valid, up to the equivalent of 75% of the minimum wage. Furthermore, the Commissioner for Human Rights raised the issue of a low effectiveness of children's maintenance payments while inter alia submitting an intervention to the President of the National Council of Judicial Officers. The Commissioner for Human Rights also exchanged correspondence with the President of the National Council of Judicial Officers on the admissibility to summon a debtor to appear in person in the office of the enforcement officer under penalty of a fine. In the opinion of the Commissioner for Human Rights, the commonly applicable law does not lay down an authorization for an enforcement officer to submit such summons to debtors. Concerns of the Commissioner for Human Rights as to the legality of the practice were fully shared by the National Council of Judicial Officers. Furthermore, an intervention was submitted to the President of the National Council of Judicial Officers with regard to the inadmissible practice, in the opinion of the Commissioner for Human Rights, to replace creditors by enforcement officers by the correspondence delivery of pre-trial orders for payment.





**The most important issues in the field of administrative  
and economic law and other fields of law**



## A. Right to good legislation

In an application filed with the Constitutional Tribunal, the Commissioner for Human Rights questioned the consistency with the Constitution of the authorization to announce by notice the method of establishing the persistent and irreversible termination of brain function as set out in the Act on the collection, storage and transplantation of cells, tissues and organs. The announcement is not a source of law and may not be the correct form to execute the authorization. The Commissioner for Human Rights is currently awaiting a trial date to be announced by the Constitutional Tribunal.

Despite the fact that all donors of organ transplants are authorized to use healthcare benefits irrespective of the specified order in accordance with the Act on the collection, storage and transplantation of cells, tissues and organs, the principles of their provision were specified in the Act on the publicly-funded healthcare benefits exclusively in case of authorizations of benefit receivers holding the title “Honoured Transplant Donor”. The inconsistency was pointed out by the Commissioner for Human Rights to the Minister of Health who shared its concerns. The Commissioner for Human Rights concluded that it was advisable to specify more in detail applicable regulations concerning authorizations of “Transplant Donors”, which would to be made under the planned amendment. The Commissioner for Human Rights is awaiting the announcement of the Minister of Health to be fulfilled.

The Commissioner for Human Rights submitted an intervention to the Minister of Health on the implementation of the judgment of the Constitutional Tribunal on the principles of financing health insurance contributions of farmers. While responding to the intervention, the Minister of Health informed that the introduction of alternative solutions seemed to serve no purpose due to the impossibility to determine incomes of individual farmers and the calculation of their contributions. However, the Minister did not exclude the possibility to amend them in future. Having exhausted available measures, the Commissioner for Human Rights decided to finish the examination of the case.

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

The Commissioner for Human Rights submitted an intervention to the Minister of Justice while pointing out the regulations of the court and administrative, administrative, tax and civil procedures that may pose a threat to executing the right to court. On the basis of the above mentioned regulations, submitting of a letter at an office of a post operator has the equivalent result to submitting a letter directly to the court, however exclusively if services of a designated post operator (Poczta Polska S.A.) are used. The above may lead to a situation when claims submitted in good faith through other operators, except for the designated post operators, will be rejected by courts. The Commissioner for Human Rights is awaiting a position to be taken by the Minister.





## C. Protection of consumers' rights

The Commissioner for Human Rights submitted an intervention to the Chairman of the Polish Financial Supervision Authority on the protection of consumers on the market of banking services who had concluded contracts for bank credits denominated in Swiss franc. In response, the Polish Financial Supervision Authority did not share the stand of the Commissioner for Human Rights, however pointed out that it had been taken actions for many years in order to limit the risk related to bank credits granted in Swiss franc. The case is being examined.

The Commissioner for Human Rights submitted an intervention to the Minister of Development on the collective actions while pointing out that the currently applicable regulation had not fulfilled consumers' expectations. The proceedings is formalized and lengthy. The Commissioner for Human Rights is awaiting a position of the Minister.

## D. Taxes and public levies

The Commissioner for Human Rights submitted an intervention to the Minister of Finance on the improvement of protection standards of the rights of tax payers by preparing the tax administration for the uniform application of the principle of resolving irremovable concerns as to the content of the tax law to the benefit of the tax payer. The Minister agreed with the stand of the Commissioner and issued a general interpretation in order to ensure that the principle would be applied in a uniform way. The case is being examined.

The Commissioner for Human Rights submitted an intervention to the Minister of Finance on the taxation of the returns of accommodation costs of the so-called mobile employee related to a business journey not being a business trip of the employee. The Minister agreed with the position of the Commissioner for Human Rights which was convenient for tax payers according to which the payment of accommodation costs of the so-called mobile employee by the employer should be treated as an expense incurred in the interest of the employer and not the employee.

The Commissioner for Human Rights submitted an intervention to the Minister of Finance on the tax exemption related to costs incurred for own housing purposes including payments made to a housing cooperative as a housing contribution in relation to the purchase of the cooperative tenant right to an apartment or the Social Housing Association for sharing construction costs of the entity. The Minister did not share the position of the Commissioner for Human Rights. The Commissioner for Human Rights has exhausted legal measures to intervene in this case.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for determining the tax-free amount. In the opinion of the Commissioner for Human Rights, the provision concerning the determination of the tax-free amount violates the principle of social justice. The currently applicable solution is harmful for tax payers, as the mentioned amount has been determined in isolation from the legally applicable poverty criteria. The Constitutional Tribunal shared the position of the Commissioner for



Human Rights and adjudicated that the questioned regulation was inconsistent with the Constitution to the extent it did not allow for a mechanism to correct the amount reducing the tax and ensuring at least the minimum necessary income.

The Commissioner for Human Rights continued its actions with regard to subscription fees. The Commissioner for Human Rights submitted an intervention to the Minister of Culture and National Heritage to take up urgent legislative works to adapt the current system of collecting subscription fees to constitutional standards. The Commissioner for Human Rights pointed out that the currently applicable system of paying subscription fees was not of a generally applicable nature. The Minister did not share the position of the Commissioner for Human Rights. The case is being examined.

## E. Economic activity

In an intervention to the Minister of the Environment, the Commissioner for Human Rights questioned regulations imposing severe (PLN 5,000-500,000) pecuniary penalties for the failure to display information about packages and packaging waste in selling points with regard to the returning and recycling systems, the correct handling of packaging waste, as well as the labelling of packages. In the opinion of the Commissioner for Human Rights, the economic situation of the penalised entity is not taken into account by imposing penalties. The Minister did not share objections of the Commissioner for Human Rights while pointing out that the organ imposing the penalty was obliged to advise about the possibility to redeem or pay the penalty in instalments. Furthermore, in the opinion of the Commissioner for Human Rights, the amount of the penalties reflects their objective which is to deprive the penalty violating the law of any benefits in this respect. The case is being examined.

The Commissioner for Human Rights declared participation in a proceedings before the Constitutional Tribunal on the constitutional complaint concerning the disclosure of commercial information. In the opinion of the Commissioner for Human Rights, the right to information, as specified in the provision of the Industrial Property Law, violates the constitutional standards regarding the limitations of the freedom of economic activity and the right to privacy in relation to the principle of proportionality. The Commissioner for Human Rights is awaiting the case to be examined by the Constitutional Tribunal.

The Commissioner for Human Rights submitted an intervention to the Minister of Finance on the activity of Internet currency exchange bureaus while pointing out that the lack of appropriate legal regulations might potentially pose a threat to customers' interests. The Minister of Finance shared the opinion of the Commissioner for Human Rights, however no changes have been implemented so far. The case remains a matter of concern for the Commissioner for Human Rights.

The Commissioner for Human Rights declared participation in a constitutional complaint proceedings before the Constitutional Tribunal with regard to the inspection of the entrepreneur. In the opinion of the Commissioner for Human Rights, the provision excluding the possibility to raise a claim to the court against a decision of an organ after





concluding the inadmissibility of the complaint questioning the validity of the inspection and actions undertaken in the course of the inspection is inconsistent with the constitutional right to court, the prohibition to pass provisions excluding the possibility to apply to courts in order to claim the violated freedoms and rights, as well as the principle of entrepreneurial freedom. The case is to be examined by the Constitutional Tribunal.

## F. Health care system

In relation with negative results of the audit performed by the Supreme Audit Office presented in the report “Functioning of the publicly-funded basic and ambulatory specialized care” [PL “Funkcjonowanie podstawowej i ambulatoryjnej opieki specjalistycznej finansowanej ze środków publicznych”], the Commissioner for Human Rights submitted an intervention to the Minister of Health and requested to provide a stand in the case together with submitting information on planned actions in order to resolve problems identified by the Supreme Audit Office. In response, the Minister agreed with the opinion of the Commissioner for Human Rights and pointed out that there was a need to introduce changes to the healthcare system, in particular in the basic healthcare, as well as informed about undertaking further legislative works.

The Commissioner for Human Rights submitted a request to the Minister of Health to regulate the principles of access to medical products by statute on the basis of transparent criteria for creating queues and performing orders, which should prevent the use of the constitutionally doubtful practice of voivodship branches of the National Health Fund to regularly introduce queues of patients without being legally authorized to do so. The Minister informed that activities would be undertaken in order to resolve the matter. The Commissioner for Human Rights is awaiting a solution to the problem.

In an intervention to the Minister of Health, the Commissioner for Human Rights presented its concerns regarding the necessity to ensure an adequate number of nurses in the light of the Act on the medical activity. In response, the Minister informed that in order to eliminate the potential deficit in the number of nurses, measures had been implemented in order to introduce a new profession of a medical carer. Minimum employment norms of nurses and midwives are also binding for entrepreneurs if they conclude a contract with the National Health Fund. In this situation, the fulfilment of the criteria by the entrepreneurs is subject to the control of the National Health Fund during the whole contract period. In the evaluation of the Ministers, guidelines, also subject to the intervention of the Commissioner for Human Rights, are not of an apparent nature in any way. Ensuring an appropriate quality and availability of healthcare benefits is of fundamental importance for determining the manner of establishing minimum norms of employment of nurses. The Commissioner for Human Rights acknowledged the explanations of the Minister.

The Commissioner for Human Rights submitted an intervention to the Minister of Health on the collection of fees for issuing medical certificates to seniors concerning the lack of health contraindications to sports activities, although one of the priorities of the senior policy is to develop and encourage physical activity of the elderly. The Minister



agreed with the comments of the Commissioner for Human Rights and pointed out that the issue of free certificates for seniors would be subject to further works in the course of the upcoming amendment of the Act on the publicly-funded healthcare benefits. The Commissioner for Human Rights is awaiting the announcement of the Minister of Health to be fulfilled.

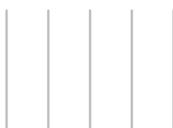
The Commissioner for Human Rights submitted an intervention to the Minister of Health on the delays in the implementation of new competences of nurses and midwives to cover inter alia the issue of prescriptions for certain drugs, orders for medical products and referrals to examinations. The Minister of Health explained why there had been delays in issuing regulations, as well as submitted information about the undertaken activities in order to organize necessary trainings for nurses and midwives still in 2015. It is planned to implement a programme to co-finance professional trainings from the EU funds by the end of the first quarter of 2016. The Commissioner for Human Rights acknowledged the explanations provided by the Minister of Health.

The Commissioner for Human Rights submitted a request to the Minister of Health to provide information whether or not legislative works had already been started or were planned in order to remove the existing legal inconsistency that prevented Polish patients from using drugs containing medical marijuana. The Commissioner for Human Rights emphasized at the same time that the problem had been noticed by the Constitutional Tribunal that pointed out the necessity to regulate the medical use of marijuana in its signalling decision of 17 March 2015. The Commissioner for Human Rights is awaiting a position of the Minister in this respect.

In the opinion of the Commissioner for Human Rights, the very adoption of the National Programme for Mental Health Treatment, without preparing necessary legislative changes and securing budgetary resources for the implementation of the objectives specified therein, did not contribute to the improvement of conditions under which psychiatric care had been provided. In response, the Minister submitted information on the implementation of the Programme, as well as assured that mental health treatment was, along with oncology and invasive cardiology, treated by both the Ministry and the National Health Fund as a priority area. The National Programme for Mental Health Treatment is to be continued after 2015. The case is being further examined.

Following former correspondence, the Commissioner for Human Rights critically evaluated the explanations of the Minister of Health regarding the situation of the Institute of Psychiatry and Neurology in Warsaw. The undertaken supervisory activities were assessed by the Commissioner for Human Rights as delayed to a large extent, as the situation had been known to the Minister for a long time. The Commissioner for Human Rights re-submitted its request to undertake measures in order to immediately improve conditions under which patients of the Institute were treated. In response, the Minister announced the implementation of the tasks called “Reconstruction of existing psychiatric hospitals” in the years 2015-2017. The Commissioner for Human Rights is going to monitor the implementation of the promises.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal for adjudicating the inconsistency with the Act on the publicly-funded healthcare





benefits and the Constitution of the Regulation of the Minister of Health on the referral to treatment or rehabilitation in health resorts. In the opinion of the Commissioner for Human Rights, the Minister of Health exceeded its statutory authorization while determining the competences of a voivodship branch of the National Health Fund to specify the type and mode of treatment, the medical institution, as well as the start date and term of treatment. The Commissioner for Human Rights also questioned the regulation excluding the possibility to raise an appeal in case the referral was not confirmed. The Commissioner for Human Rights is currently awaiting a trial date to be announced by the Constitutional Tribunal.

The Commissioner for Human Rights filed an application with the Constitutional Tribunal concerning the lack of appropriate transitional provisions in the Act of 1 November 2015 on the infertility treatment. Upon the entrance into force of the Act, women not being married or in cohabitation with a man who have deposited embryos from their egg cells and a cell of an anonymous donor will not be able to use them as long as they do not have partners declaring their willingness to become fathers. The adopted regulations raise concerns as to the constitutional right to privacy and the related freedom to decide on whether or not to have children. The case is to be examined by the Constitutional Tribunal.

The Commissioner for Human Rights also addressed the Minister of Health with a request to explain reasons for which the Ministry intended to abandon the financing of the in vitro fertilization procedure from public funds and provide arguments for supporting other forms of infertility treatment, excluding in vitro. In response, the Minister of Health provided appropriate explanations and informed that in the evaluation of the Ministry, the violation of human and civic rights and freedoms was not in place in the mentioned case.

In following interventions to the Minister of Health, the Commissioner for Human Rights requested to start legislative works aimed at establishing a mechanism that would enable a patient, whom a doctor had denied a specific treatment by referring to the conscience clause, to receive information where it was factually possible to get the necessary medical treatment. The Minister of Health explained that applicable provisions included such a mechanism due to which it was not necessary to undertake any other measures.

## G. Protection of Rights of Persons with Disabilities

The Commissioner for Human Rights submitted an intervention to the Chairman of the Sejm Committee for Social Policy and Family on the effective implementation of the right of the blind to access transport means with a guide dog. The Chairman fully shared the concerns expressed by the Commissioner for Human Rights while announcing the intent to start analytical and conceptual works in order to work out legal mechanisms ensuring the execution of statutory authorizations for persons with disabilities. The case is being examined.

The Commissioner for Human Rights submitted a request to the Minister of Labour and Social Policy to indicate reasons for which the legislator had excluded the appeal procedure against certificates concerning allowances and authorizations issued to persons holding



a decision about being classified to one group of the disabled. The Minister informed that the justification was a premise that by issuing the decisions, the degree of disability was not established as result of the examination of the state of health, but by “assigning” a degree of disability on the basis of the decision about the disability. At the same time, a person with disabilities may decide to submit an application for issuing the decision in the standard mode (for establishing the degree of disability). The case is being examined.

The Constitutional Tribunal examined the application of the Commissioner for Human Rights regarding the inconsistency with the Constitution of a provision of the Act on the railway transport to the extent it did not specify any time framework for the obligation to adapt stations, platforms and rolling stock to the needs of persons with limited mobility. The Constitutional Tribunal did not share the position of the Commissioner for Human Rights.





**The most important issues in the field of the principle  
of equal treatment and combating discrimination**





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

Due to the inflow of numerous group of migrants to Europe, the international community, in particular the European Union, faces a challenge to ensure adequate support for persons in the most difficult situation. In the opinion of the Commissioner for Human Rights, it is necessary to strengthen efforts to address the increasing wave of hatred against migrants. Information about the course of demonstrations organized in multiple cities by the opponents to receiving migrants to Poland is of particular concern. Behaviours exhibited during the assemblies, including some statements by their participants, may be treated as exceeding the borders of the freedom of speech, even if they fulfil the features of an offence, in particular insulting a group of people defined by reference to race or religion or calling to hatred on the ground of ethnic or religious differences. The Commissioner for Human Rights has consistently pointed out the need that prosecution authorities being obliged to ensure security to all persons staying in the territory of our country must react swiftly and adequately, including their adequate reaction to discriminatory offences.

The Commissioner for Human Rights submitted a request to the Police Commander in Chief to provide information whether there were any events recorded by officers of the Police while performing their duties that could fulfil the features of an offence, the number of initiated proceedings, as well as to specify if there had been any actions undertaken to ensure the expected effectiveness of the Service in terms of the protection of persons already staying in the territory of Poland and planning to visit Poland. Furthermore, the Commissioner for Human Rights submitted a request to the General Prosecutor to submit an evaluation of the effectiveness of actions undertaken by the Prosecutor's Office in this area, as well as identify planned actions aimed at addressing the phenomenon of the spreading speech of hatred, in particular on the Internet.

The Commissioner for Human Rights raised the issue of inscriptions, symbols or signs on buildings that might fulfil features of a hatred-motivated offence. In the opinion of the Commissioner for Human Rights, if hateful inscriptions are placed on buildings, this may be interpreted as an inadequate aesthetic state and may lead to such a disfiguration of the surrounding areas that may be a basis for the appropriate building control authority to intervene. The Commissioner for Human Rights submitted a request to the General Inspector of Building Control to explain the interpretation of appropriate provisions of the Construction Law and the practice of their application.

The situation of the Roma community has been a matter of concern for the Commissioner for Human Rights for many years. In the course of visits to Roma housing estates in Lesser Poland, the Commissioner for Human Rights submitted an intervention to the Minister of the Interior and Administration on the need to create a complex programme, independent of the currently implemented programme "Programme of social integration of the Roma in Poland for the years 2014-2020" ["Program integracji społeczności romskiej w Polsce na lata 2014-2020"], the aim of which would be exclusively the planning and financing of the process of improving life and housing conditions in Roma housing estates all over Poland. In the opinion of the Commissioner for Human Rights, it is also advisable





to consider solutions that could encourage self-governmental authorities to engage more in activities aimed at improving life conditions of local Roma communities. As far as social and housing conditions of the Roma are concerned, the Commissioner for Human Rights also submitted an intervention to the mayor of the municipality of Limanowa where one of the Roma housing estates is located, and pointed out that irrespectively of introduced changes, the majority of problems of residents of the housing estate remained unresolved.

The Commissioner for Human Rights also continued activities for the group of the Romanian Roma living inter alia in Wroclaw who could not sort out their stay in the territory of Poland for various reasons. The lack of residence registration in such cases excludes the possibility to receive social assistance benefits. This means that the situation of the Romanian Roma in Poland has hardly improved. This group keeps living in extreme poverty and under conditions that are tantamount to an affront to human dignity. The Commissioner for Human Rights addressed the Minister of the Interior and Administration again, while indicating the necessity to simplify the registration procedure for EU citizens in Poland. Finally, the Ministry of the Interior and Administration shared concerns expressed by the Commissioner for Human Rights. The Minister of the Interior and Administration confirmed in its response that in 2016 changes would be introduced in order to facilitate the procedure of obtaining the right to be resident in the territory of Poland by EU citizens. The facilitations are to eliminate difficulties with registering the residence by persons in a difficult financial situations that were signalled by the Commissioner for Human Rights.

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

The Commissioner for Human Rights published a report on the studies titled “*Availability of religion classes for minority religions and ethics classes within school education. Analysis and recommendations.*” The results of the studies suggest that the adopted legal solutions, although they contributed to the improvement of the situation, do not protect particular religious and social groups in a sufficient way, while the access to religion lessons for minority religions and ethics classes is not always guaranteed. In the course of the studies, it was established among others that there are situations when marks in religion classes for minority religions are not included in school reports of children belonging to churches or religious associations that conduct religion education both under and outside of the school education system. Although the provisions were amended, the studies also revealed situations when the organization of ethics classes was denied due to an excessively low number of pupils, although the obligation of the school or the managing authority is to organize ethics classes or religion classes for minority religions even at a request of one pupil. Persons trying to organize such classes faced their requests to organize ethics or religion classes for minority classes being ignored, the same referring to reports or exercising pressure on a child to participate in religion classes with the remaining part of its class.

In the opinion of the Commissioner for Human Rights, the above mentioned examples mean unlawful direct discrimination on the grounds of religion or belief in the field of



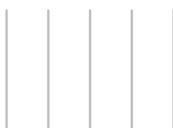
education. In order to prevent such phenomena, the Commissioner for Human Rights supplemented the mentioned report by conclusions and recommendations for particular organs of the public authorities.

The Commissioner for Human Rights continuously receives complaints from persons staying in penal institutions and pre-trial detention facilities that indicate problems with getting food according to their religious, vegetarian or any other individual diet. In a response to the intervention of the Commissioner for Human Rights, the General Director of the Prison Service informed that organizational units of the Prison Service possessed technical equipment and organizational capacities that allowed in the majority of cases to provide the imprisoned with food according to their religious and cultural requirements. As far as prisoners transferred to other penitentiary units are concerned, it is planned to enable their further feeding according to the same nutritional norm and diet by taking into account religious requirements provided that they are available in the unit the prisoner is transferred to. The obligation to receive an approval of the director for receiving food according to religious and cultural requirements shall refer exclusively to the situations when the requested kind of food has never been prepared by the penitentiary unit the prisoner is transferred to.

### C. Combating discrimination on the grounds of sex

The Commissioner for Human Rights pays particular attention to the problem of gender-based violence and domestic violence, as well as effective means of combating them. The Commissioner for Human Rights recommended on several occasions that a nationwide, 24-hour and free telephone helpline for victims of violence should be made available in order to provide them with advice and make it possible to inform appropriate services in emergency situations posing a threat to their life and health. From currently available information results that a nationwide telephone helpline for victims of violence will not be financed until 2017. The Commissioner for Human Rights called on the Prime Minister to speed up the launching of such a helpline, in particular while recognizing that currently available instruments were not sufficient. In the evaluation of the Minister of Family, Labour and Social Policy, it is not possible to launch a free telephone helpline sooner.

Furthermore, the Commissioner for Human Rights paid attention to the issue of adapting Polish legislation on the isolation of a perpetrator from a victim of violence to the requirements of the Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention). The provisions of the Convention lay down that states shall take necessary measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Legislation in force provides for a number of measures to isolate the perpetrator of domestic violence from its victim, however they are not sufficient and must be supplemented appropriately.





The Minister of Family, Labour and Social Policy announced the introduction of legal measures to the Act on the Police in order to swiftly and effectively isolate perpetrators of violence before the beginning of criminal proceedings.

Limitations in the access to payments from the Children's Maintenance Fund are another significant problem in this area. The evasion of children's maintenance shall be treated as a form of economic violence that affects women in the first place. This practice requires the state to take complex measures in relation to a low efficiency of currently available methods of enforcing the payments. The amount of benefits paid from the Children's Maintenance Fund and the amount of the income criterion have not changed for 7 years since the Act on the assistance to persons entitled to children's maintenance entered into force. Taking into consideration the weakening of the real value of money, the increase in maintenance costs, and in particular the increase in the minimal wage, the omission entails significant consequences. Due to the above reasons, the Commissioner for Human Rights requested the Prime Minister to undertake measures in order to secure the rights of parents and children deprived of children's maintenance, including the abolition of the income criterion or increasing its amount.

The Commissioner for Human Rights also took several actions for the reproductive rights of women and reproductive health. The Commissioner for Human Rights filed an application with the Constitutional Tribunal concerning the lack of appropriate transitional provisions in the Act on the infertility treatment. Their absence means that women not being married or in cohabitation with a man who have deposited embryos from their egg cells and a cell of an anonymous donor before the Act on the infertility treatment entered into force will not be able to use them as long as they do not have partners declaring their willingness to become fathers, while the embryo will be transferred to the so-called donation upon the lapse of 20 years from the date of the entry into force of the Act or upon the death of the donors of the embryo. The Commissioner for Human Rights also addressed the Minister of Health with a request to explain reasons for which the Ministry intended to abandon the financing of the in vitro fertilization procedure from public funds (under the programme carried out from 2013) and provide arguments for supporting other forms of infertility treatment, excluding in vitro.

Furthermore, the Commissioner for Human Rights submitted an intervention to the National Health Fund to explain the difference in the access of female patients to pharmacological methods of anaesthesia during childbirth depending on the place of residence. From the press results that 75% of all cases of anaesthesia during childbirth took place in the biggest cities in Poland like Warsaw, Cracow and Katowice. Such a significant disproportion in the access to health benefits financed fully by the National Health fund was subject to the concerns of the Commissioner for Human Rights on whether women giving birth to a child were really guaranteed an equal access to this benefit regardless of their place of residence. The Commissioner for Human Rights also addressed all branch offices of the National Health Fund to make available data on the number of childbirths by natural forces and the number of cases of epidural anaesthesia during childbirths in 2015.

In relation to the judgment of the Constitutional Tribunal which annulled some regulations of the Medical Profession Act, the Polish legal system lacks an accurately specified



entity that is obliged to provide a patient, whom a doctor denied a specific treatment by referring to the conscience clause, with real possibilities to receive such a treatment to be done by a different doctor or any other medical entity. In an intervention addressed to the Minister of Health, the Commissioner for Human Rights pointed out the necessity to start urgent legislative works in order to eliminate the legal gap.

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

The Commissioner for Human Rights receives signals about the large scale of violence motivated by prejudices. Violence and speech of hatred are still specific forms of discrimination faced by members of national, ethnic or religious minorities, as well as elderly persons, persons with disabilities, non-heterosexual persons and transgender persons. Violence against them is of a particular nature. Due to the fact that it is motivated by prejudices of the perpetrator, such cases require greater efforts to detect, prosecute and penalise them. Crimes motivated by hatred that are currently penalised under the Criminal Code include crimes on the grounds of nationality, race, ethnic origin, religion or lack of religious beliefs of the victim. In the opinion of the Commissioner for Human Rights, the obligation to disclose motives of the perpetrator and a more severe punishment shall be extended onto such premises as disability, age, sexual orientation and sexual identity.

The Commissioner for Human Rights also took up a case of a transsexual man who had been arrested for travelling by a tram without a ticket and a suspicion of using foreign documents or personal data of a different person. In relation to the accusation of degrading treatment by officers of the Police, the Commissioner for Human Rights analysed files of the explanatory proceedings conducted by the Police and the Prosecutor's Office. The accusation of degrading treatment was not confirmed; however, the biggest point of concern for the Commissioner for Human Rights was the very fact of arresting the disadvantaged and the evaluation of its legality performed by the prosecutor in the justification of the decision on the refusal to institute the proceedings. In the opinion of the prosecutor, the fact that the disadvantaged was transferred to the Police station is a "short-term limitation of its freedom to use its liberty" which is not an arrest in the meaning of the provisions of the Code of Criminal Procedure. However, the Commissioner for Human Rights is of the opinion that the transfer to the Police station is an arrest and shall fulfil specific conditions as specified in the respective provisions. Such an opinion was also confirmed by the European Court of Human Rights in Strasbourg in case *Tomaszewscy v. Poland*.

The Commissioner for Human Rights joined court proceedings concerning the decision of the Director of the Civil Registry Office of the capital city of Warsaw not to issue a certificate about the capacity to enter into marriage abroad due to the fact that the future spouse of the applicant is of the same sex as the applicant. In the opinion of the Commissioner for Human Rights, the marriage capacity shall be assessed with regard to a specific person of the future spouse, which makes it impossible to issue a certificate to the applicant due to the fact that is intends to enter into marriage with a partner of the same sex. However, such





provisions of the national law are, in the opinion of the Commissioner for Human Rights, contradictory to the EU law, as they limit the freedom of movements, as well as violate the provisions of the Charter of Fundamental Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. In consequence, the Commissioner for Human Rights filed an application for asking a prejudicial question to the Court of Justice of the European Union about the scope of application of the EU law in this case. The District Court accepted the application of the Commissioner for Human Rights neither for amending the ruling of the court of the first instance nor for asking the prejudicial question and dismissed the appeal of the applicant.

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

The Commissioner for Human Rights pays particular attention to the protection of the rights of persons with mental or psychical disabilities, in particular incapacitated persons. One of the judgments of the European Court of Human Rights that have not been implemented is the judgment of 2012 in case *Kędzior vs. Poland* concerning the principles of placing incapacitated persons in social care centres. The Court concluded in the judgment that Poland violated the provisions of the Convention against a mentally ill person that was placed by its legal guardian in a social care centre against its will. The provisions of the Act on the protection of mental health do not provide for an automatic court evaluation of the legality of placing and detaining a person in a care home, e.g. a social care centre. Furthermore, the evaluation may not be requested by a person who has been legally incapacitated. The Commissioner for Human Rights called on the Minister of Health to undertake an urgent amendment of the Act on the protection of mental health; having received an unsatisfactory response, the Commissioner for Human Rights filed an application with the Constitutional Tribunal while questioning some provisions of the Act. In the opinion of the Commissioner for Human Rights, the only premise justifying the omission of the will of a legally incapacitated person while taking a decision about its placing in a social care centre may be the incapacity to express it.

The Commissioner for Human Rights also continued works for the right to education of persons with disabilities. From the research commissioned by the Commissioner for Human Rights results that students with disabilities face not only architectural and communication barriers, but also those resulting from the mentality of certain employees of higher education institutions or other students that prevent them from starting or continuing education in a higher education institution in the most extreme cases. The most serious problem is the exclusion of persons with disabilities from potential students of some higher education institutions. In the opinion of the Commissioner for Human Rights, a potential limitation in the access to the academic education must be based on objective and rational premises and refer to particular persons rather than all persons with disabilities. The Commissioner for Human Rights also calls for amending the Higher Education Law



in order to enable higher education institutions to support persons with disabilities being students of postgraduate studies, as well as to enable students with disabilities to receive social scholarship in a second field of study in case they were not entitled to receive such in their first field of study. The Commissioner for Human Rights included results from the conducted research in the report titled “Availability of academic education for persons with disabilities. Analysis and recommendations”, as well as in the intervention submitted to the Minister of Science and Higher Education.

The Commissioner for Human Right also took up actions in order to make real the rights of persons with disabilities in the fields of information, freedom of speech and expressing their opinion that are executed in two fundamental areas. Firstly, in terms of the official recognition of the sign language and the guarantee that persons with disabilities may use chose means of communication in any and all official matters; secondly, in terms of adapting public Internet sites to the needs of users with disabilities.

In an intervention to the Government Plenipotentiary for the Disabled, the Commissioner for Human Rights indicated the low efficiency of solutions set out by the Act on the sign language and other means of communication. In the opinion of the Commissioner for Human Rights, it is necessary to amend the Act so that all financial institutions are obliged to cooperate with translators for sign language in the framework of public resources, as well as the principles of financing such services are simplified.

The Commissioner for Human Rights also addressed the Minister of Digital Affairs while pointing out that despite of the expiry of the deadline for adapting all public Internet sites to the needs of persons with disabilities, many websites remain inaccessible, while numerous public institutions do not undertake any actions in order to adapt them. The Commissioner for Human Rights requested the Minister to explain what type of actions were taken to meet the deadline for ensuring a full availability of public Internet sites, as well as how the Ministry of Digital Affairs intended to ensure the availability of Internet sites of self-governmental units.

Acting as an independent monitoring organ, the Commissioner for Human Rights also published the Report on the implementation of the requirements resulting from the Convention on the Rights of Persons with Disabilities in the years 2012-2014 in Poland. The Report is available electronically and in Polish sign language on the Internet site of the Commissioner for Human Rights.





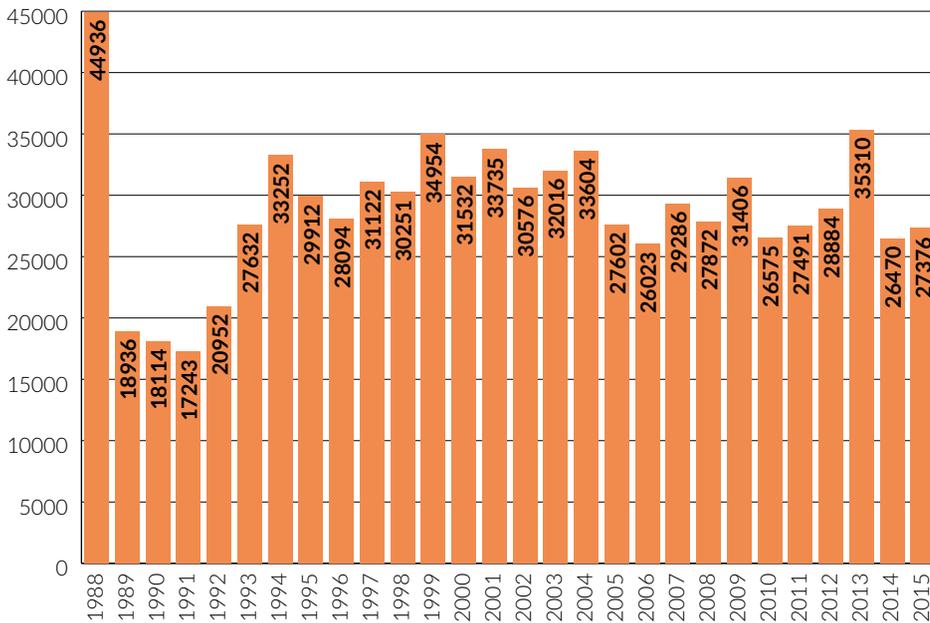
Information and statistical data

Applications received by the Commissioner for Human Rights

	<b>2015</b> 1.01. – 31.12.
Applications in total	57 627
New cases	27 376
Responses in interventions taken by the CHR	12 832

In 2015, the Office of the Commissioner for Human Rights received a total of 5,656 applicants and answered 38,074 phone calls, while giving explanations and advice.

Inflow of new cases in total in the years 1988-2015



The Commissioner for Human Rights		2015
1)	made interventions concerning systemic problems – including motions to take a legislative initiative	286 144
2)	submitted motions to the Constitutional Tribunal to confirm inconsistency of regulations with a higher level act	21
3)	made notifications to the Constitutional Tribunal on joining proceedings in a constitutional complaint case	12
4)	made notifications to the Constitutional Tribunal on joining proceedings in legal question cases	5

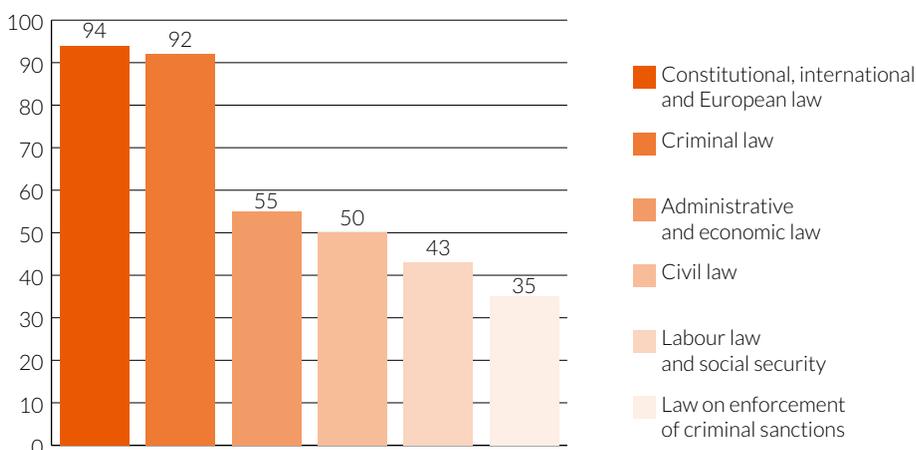


5)	made notifications to the Constitutional Tribunal on joining proceedings in other application cases	4
6)	addressed juridical questions to the Supreme Court	4
7)	made cassations	60
8)	filed cassation appeals with the Supreme Court in civil cases	1
9)	filed cassation appeals with the Supreme Court in labour law cases	1
10)	filed cassation appeals with the Supreme Administrative Court	6
11)	submitted motions to the Supreme Administrative Court for interpretation of regulations	1
12)	filed complaints with Voivodeship Administrative Courts	12
13)	joined court proceedings	19
14)	joined administrative proceedings	3

From among four hundred and thirty-five (435) interventions of a general character and specific remedies addressed by the Commissioner for Human Rights in 2015, most cases were in the field of:

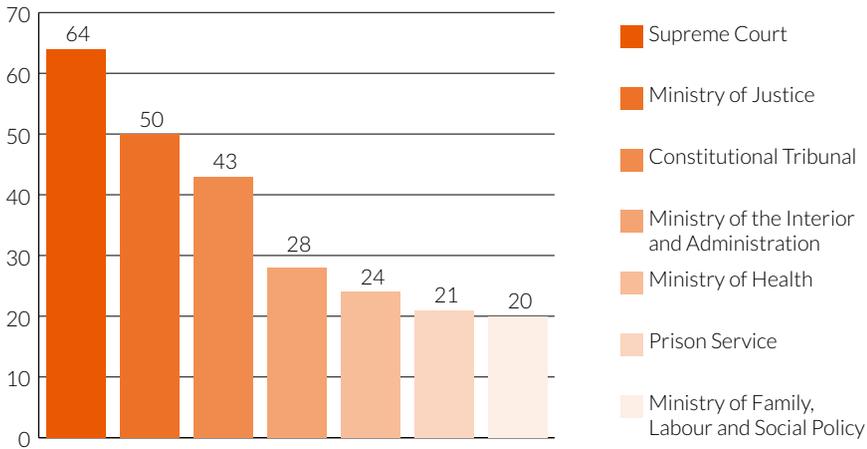
Problem area	Number	%
constitutional, international and European law	94	21,6
criminal law	92	21,1
administrative and economic law	55	12,6
civil law	50	11,5
labour law and social security	43	9,9
law on enforcement of criminal sanctions	35	8,0

General interventions by problem area





### Main addressees of the interventions of the Commissioner for Human Rights



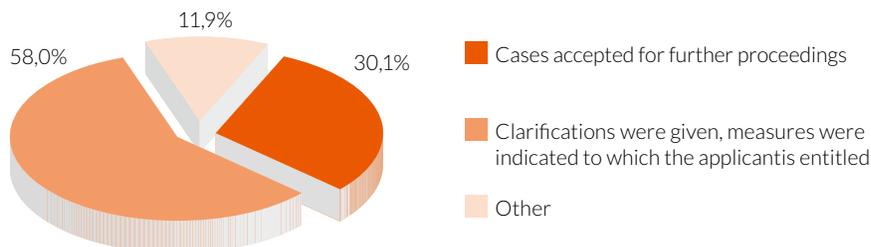
### Cases examined in 2015

In the period covered by this Report, **29,923** cases were examined, of which:<sup>6</sup>

1	Manner in which the case was examined		Number	%
	2		3	4
Cases accepted for further proceedings	1	<b>Total</b>	<b>9 006</b>	<b>30,1</b>
	2	cases accepted for further proceedings, including those on the initiative of the CHR	7 679	25,7
	3	as general petitions	1 327	4,4
Clarifications were given, measures were indicated to which the applicant is entitled	4	<b>Total</b>	<b>17 357</b>	<b>58,0</b>
	5	clarifications were given, measures were indicated to which the applicant is entitled	17 357	58,0
Other	6	<b>Total</b>	<b>3 560</b>	<b>11,9</b>
	7	complaint referred to a competent authority	672	2,2
	8	complaint returned to be supplemented with necessary information	1 046	3,5
	9	not accepted for further proceedings <sup>6</sup>	1 842	6,2
<b>Total</b>			<b>29 923</b>	<b>100,0</b>

<sup>6</sup> Interventions addressed to other bodies and interventions of unintelligible content transmitted to the Commissioner for Human Rights.

### Manner of examination of cases in 2015

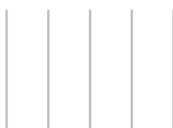


From among **29,923** interventions addressed by the CHR, most cases were in the field of:

Problem area	Number	%
criminal law	7 363	24,6
civil law	5 788	19,3
law on enforcement of criminal sanctions	5 648	18,9
administrative and economic law	4 769	16,0
labour law and social security	3 414	11,4
constitutional and international law	1 615	5,4
other	1 326	4,4

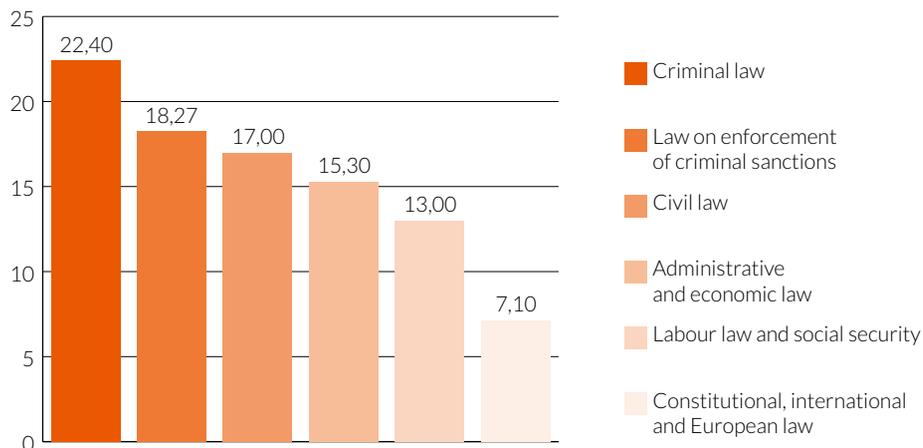
From among **29,923** interventions addressed by the CHR **9,006** were accepted for further proceedings with the majority in the field of:

Problem area	Number	%
criminal law	2 016	22,4
law on enforcement of criminal sanctions	1 645	18,3
civil law	1 534	17,0
administrative and economic law	1 376	15,3
labour law and social security	1 169	13,0
constitutional, international and European law	640	7,1
other	626	6,9





### Problem areas of undertaken cases

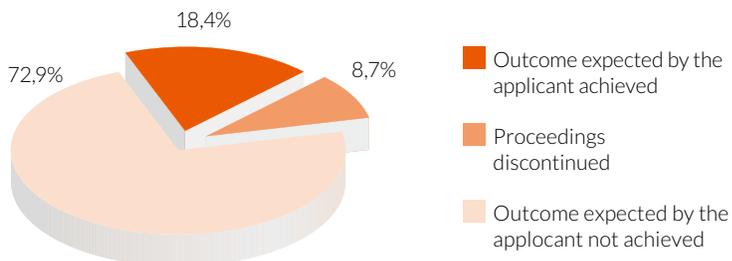


Proceedings were completed in **7,947** cases undertaken in 2015 and in previous years.

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant and the CHR achieved	1	<b>Total (2+3)</b>	<b>1 463</b>	<b>18,4</b>
	2	Applicant's claims confirmed	929	11,7
	3	General petition of the CHR acknowledged	534	6,7
Proceedings discontinued	4	<b>Total (5+6)</b>	<b>693</b>	<b>8,7</b>
	5	Proceedings pending (ongoing procedure)	250	3,1
	6	CHR refrained from further proceedings (objective reasons)	443	5,6
Outcome expected by the applicant not achieved	7	<b>Total (8+9+10)</b>	<b>5 791</b>	<b>72,9</b>
	8	Applicant's claims not confirmed	4 679	58,9
	9	General petition of the HRD not acknowledged	1 058	13,3
	10	Measures available to the HRD exhausted	54	0,7
<b>Total</b>			<b>7 947</b>	<b>100,0</b>



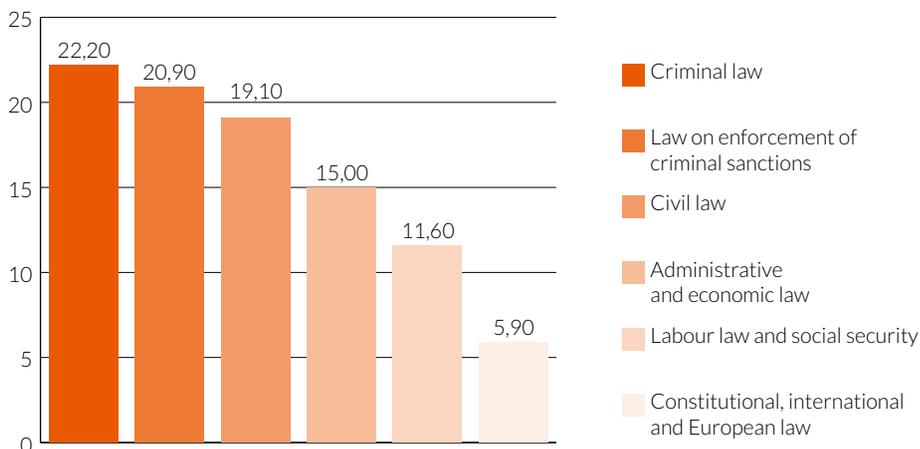
### Completion of undertaken cases



### Subject of new cases (applications) in 2015

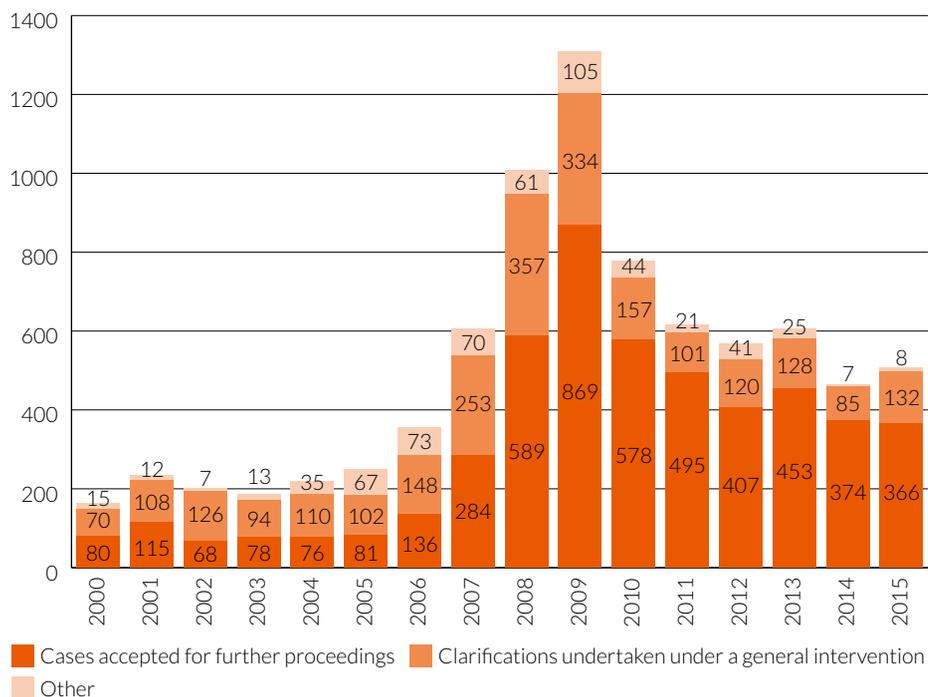
	Problem area	Number	%
1	constitutional, international and European law	1622	5,9
2	criminal law	6 082	22,2
3	law on enforcement of criminal sanctions	5 718	20,9
4	labour law and social security	3 182	11,6
5	civil law	5 225	19,1
6	administrative and economic law	4 094	15,0
7	equal treatment	837	3,1
8	National Preventive Mechanism	134	0,5
9	protection of the rights of soldiers and officers	263	0,9
10	other	219	0,8
11	<b>Total</b>	<b>27 376</b>	<b>100,0</b>

### Main problem areas of new cases in 2015

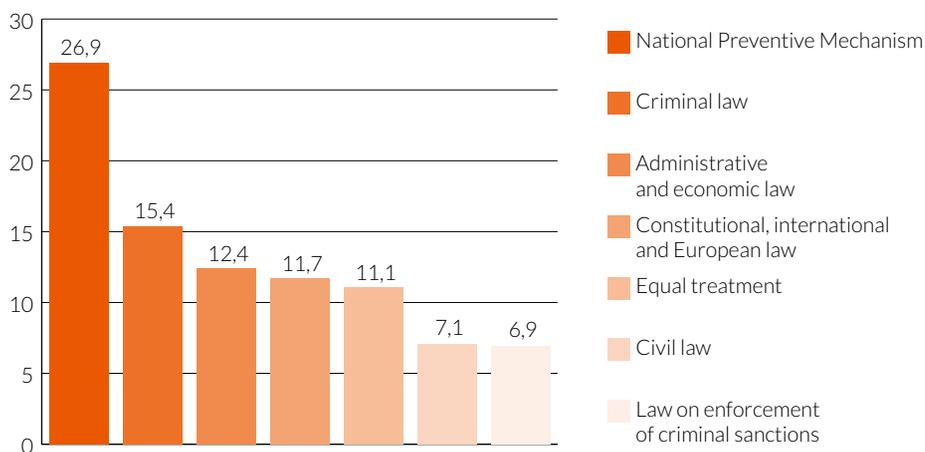




### Cases examined on the initiative of the Commissioner for Human Rights

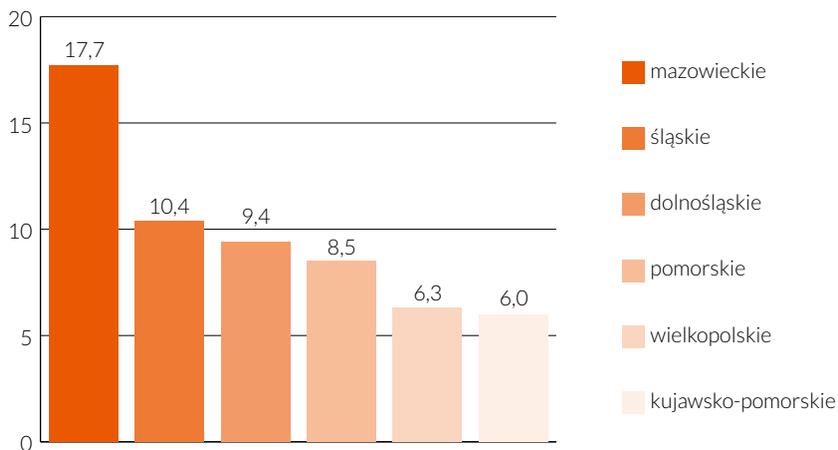


### Cases undertaken on the initiative of the Commissioner for Human Rights by problem areas

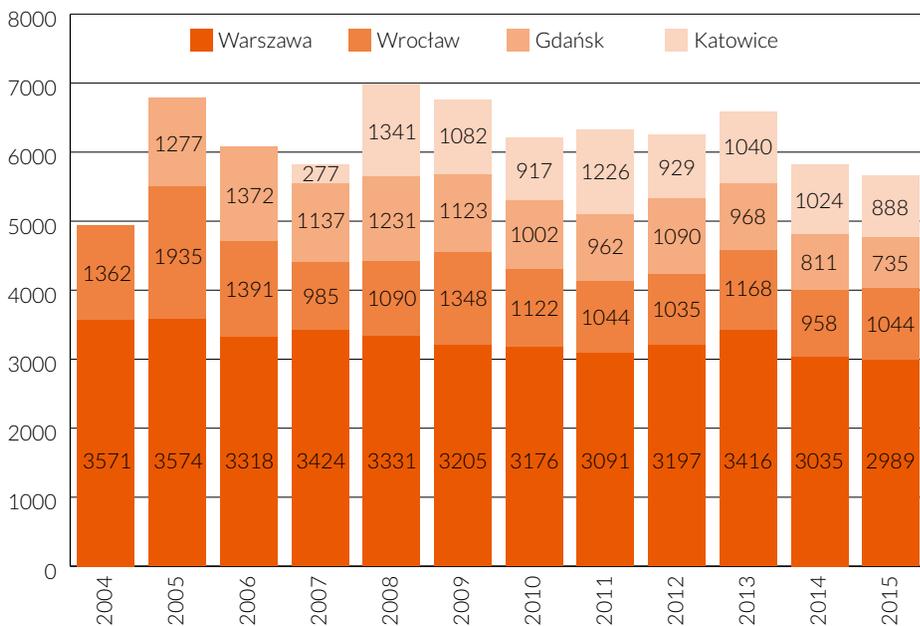




### The highest inflow of new cases by voivodships

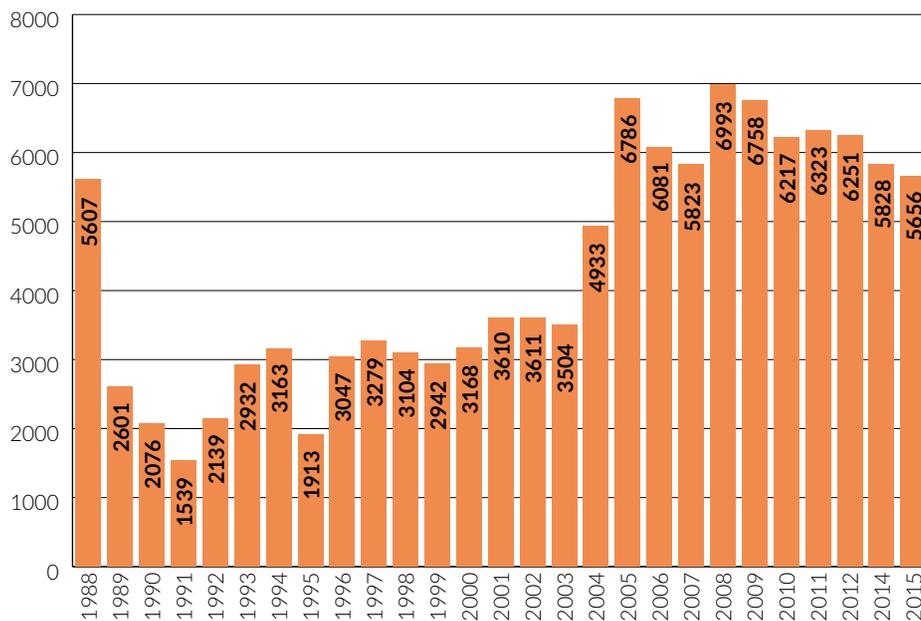


### Applicants received

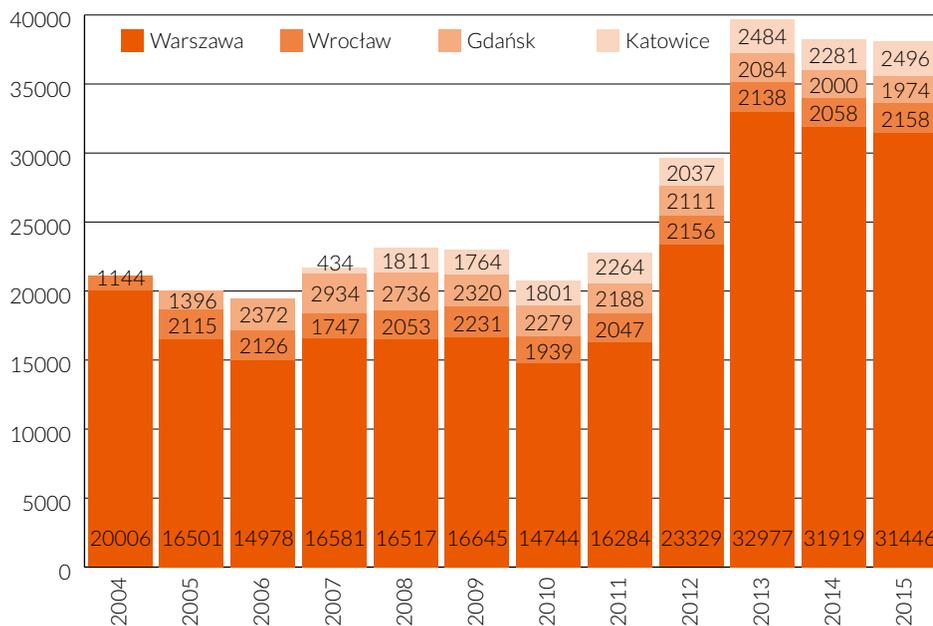




### Applicants received in the years 1988-2015

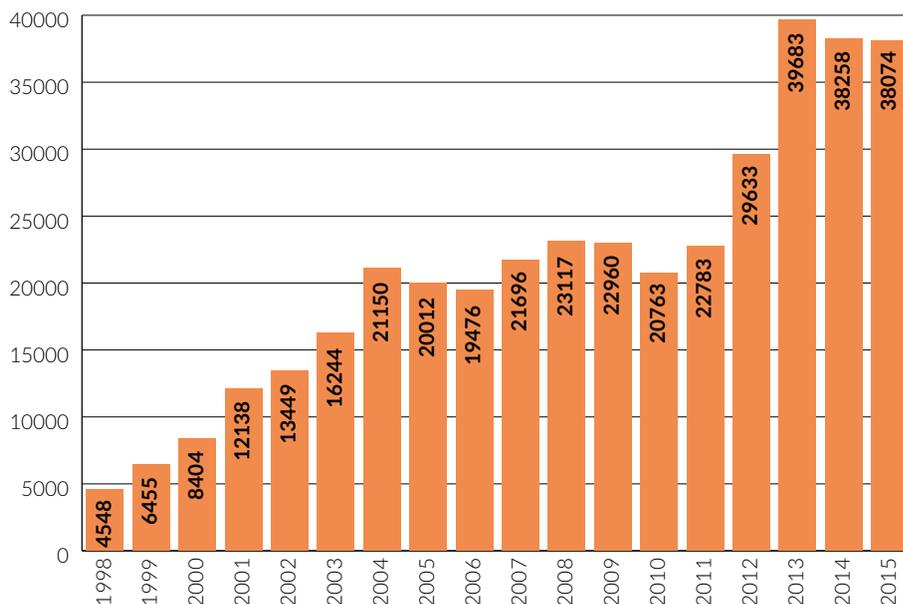


### Advice provided by telephone

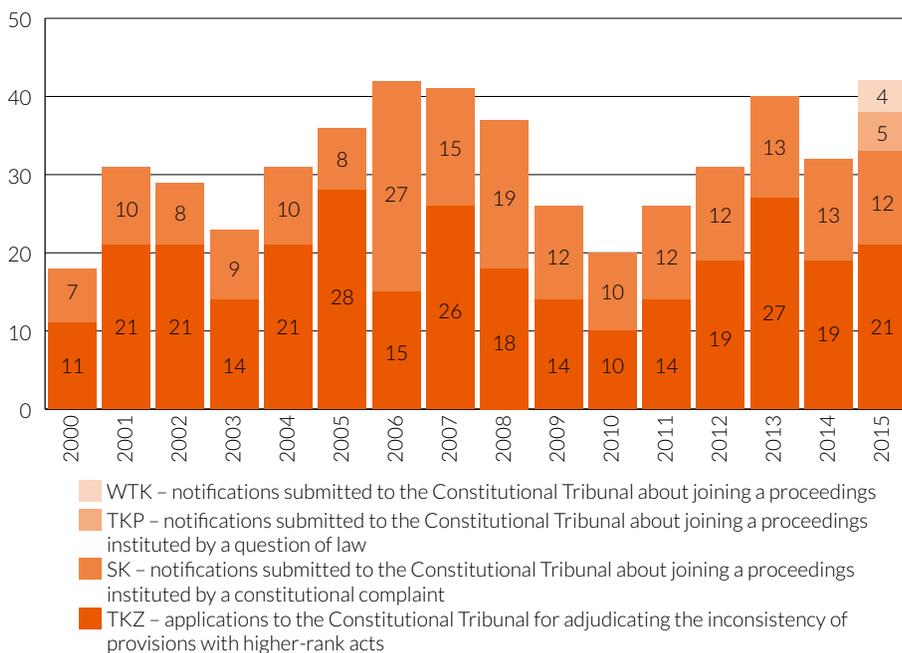




### Advice provided by telephone in the years 1998-2015

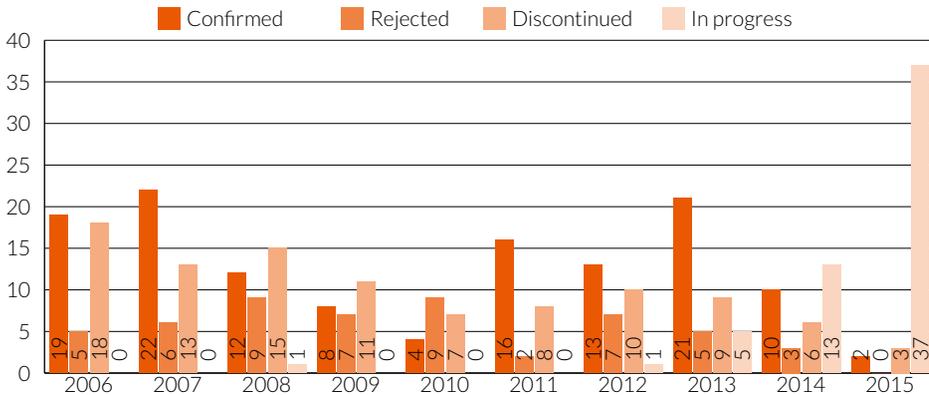


### Applications to the Constitutional Tribunal and proceedings in constitutional complaint cases and question of law cases joined by the CHR





## Decisions by the Constitutional Tribunal on applications to declare regulations inconsistent with the Constitution and on proceedings in constitutional complaint and question of law cases joined by the CHR<sup>7</sup>



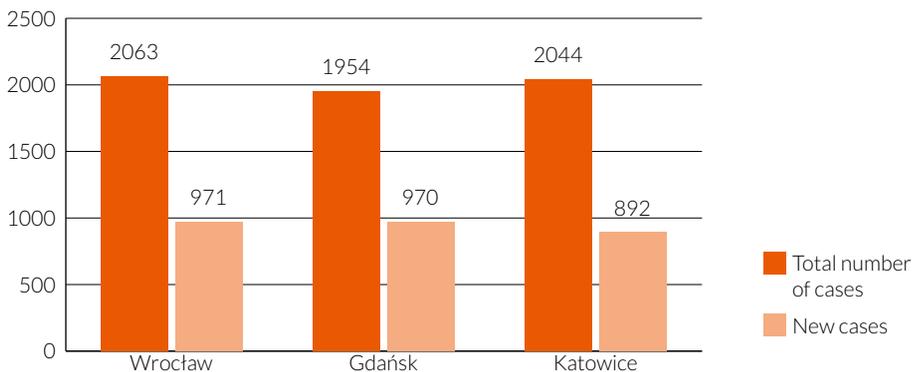
## Offices of the Local Representatives



<sup>7</sup> As of 31 December 2015. Data are presented by years when the applications were submitted by the Commissioner for Human Rights.



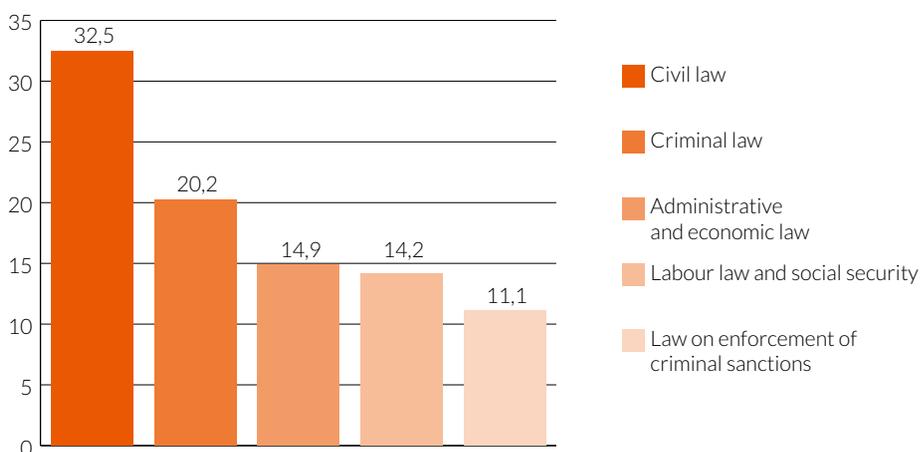
### Inflow of cases to the Offices of the Local Representatives



New applications submitted to the Offices of the Local Representatives concerned cases in the field of:

Problem area	Number	%
civil law	922	32,5
criminal law	571	20,2
administrative and economic law	421	14,9
labour law and social security	402	14,2
law on enforcement of criminal sanctions	314	11,1

### Main problem areas of case undertaken by the Offices of the Local Representatives

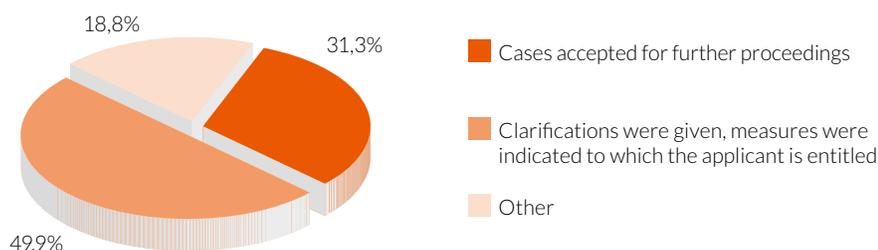




In the period covered by this Report, **2,926** cases were examined by the Offices of the Local Representatives, including:

Manner in which the case was examined	Number	%
cases accepted for further proceedings	917	31,3
clarifications were given, measures were indicated to which the applicant is entitled	1459	49,9
complaint referred to a competent authority	37	1,3
complaint returned to be supplemented with necessary information	58	2,0
not accepted for further proceedings <sup>8</sup>	455	15,5

### Examination of cases by the Offices of the Local Representatives



Proceedings in **728** cases undertaken in 2015 and in previous years were completed by the Offices of the Local Representatives.

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant achieved	1	<b>Total (2+3)</b>	<b>137</b>	<b>18,8</b>
	2	Applicant's claims confirmed	126	17,3
	3	General petition of the CHR acknowledged	11	1,5
Proceedings discontinued	4	<b>Total (5+6)</b>	<b>45</b>	<b>6,2</b>
	5	Proceedings pending (ongoing procedure)	22	3,0
	6	CHR refrained from further proceedings (objective reasons)	23	3,2
Outcome expected by the applicant not achieved	7	<b>Total (8+9+10)</b>	<b>546</b>	<b>75,0</b>
	8	Applicant's claims not confirmed	521	71,6
	9	General petition of the CHR not acknowledged	11	1,5
	10	Measures available to the CHR exhausted	14	1,9
<b>Total</b>			<b>728</b>	<b>100,0</b>

<sup>8</sup> Interventions addressed to other bodies and interventions of unintelligible content transmitted to the Commissioner for Human Rights.



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

