Business and human rights – access to remedy

POLAND - Country report

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1. Introduction

This report provides information about the level of protection of human rights in the context of business activity in Poland, with special attention given to consumer protection.

The report presents data gathered in the course of four (4) individual semi-structured interviews held face to face in Warsaw, Poland. In two cases additional information was obtained in the course of an email exchange with the interviewees to clarify specific issues raised during the interview.

Efforts were undertaken to conduct interviews with lawyers linked professionally through their current affiliation/workplace with different stakeholder groups to ensure a variety of perspectives and experiences:

- lawyer (Attorney at law) – practicing lawyer having a substantial experience as an in-house lawyer in an international ICT company;
- lawyer – senior lawyer at an NGO active in the environmental and human rights field;
- lawyer (legal advisor) working at the Office of the Municipal Consumer's Ombudsman (public administration, self-government);
- lawyer (Attorney at law) – practicing lawyer specializing in data protection.

Three of the interviewees had the first-hand experience with consumer protection cases either in the current or past roles, with one of them also in group proceedings cases.

2. General assessment of remedies in business related human rights abuses

The research conducted reveals rather a negative picture of the access to remedy in business-related human rights abuses in Poland.

In the opinion of the interviewees, the court proceedings are the only effective remedy available for individuals affected by business-related human rights abuses, including consumer-related cases concerning simple cases of warranty or legal guarantee. Yet, given the extreme length of the court proceedings (even approx. 1.5-2 years in simple consumer rights cases – to 10 years and more in group proceedings cases), their costs and limited free legal aid as well as time engagement necessary – many people resign from claiming and defending their rights, particularly in relatively low value consumer rights cases. As stressed by one of the interviewees, a practicing lawyer:

> *"The consumer is left alone with the case. And the costs s/he needs to incur to win a case in a court, might be higher than the value of the very product concerned. (…) The binding laws do protect the consumer's interests, but to enforce them one has to go to the court, what in case of a product of everyday use, will not always pay off for consumers. Everyone knows perfectly well how our courts function, how big backlog of cases there is. People give up and do not pursue their rights, either sell the items or just throw them away, and that's where unethical traders feed and thrive".(PL/1)*

While a broad range of non-judicial mechanisms and procedures is available - from seeking help of the district (municipal) consumer ombudsman through the possibility to make use of the permanent courts of conciliation and arbitration courts (*sądy polubowne*) to various forms of mediation – still, all those options are voluntary. Given the lack of obligation to engage in amicable dispute resolution and lack of enforceability of the outcomes of voluntary procedures (mediation, intervention by the consumer rights ombudsman, etc.), in many situations, the judicial path is thus the only way to obtain justice and enforce the outcome. Often, entrepreneurs choose to disregard the amicable dispute resolutions or, if they engage in them, this is sometimes only to prolong the proceedings. As stressed by one of the interviewees:

> *"the problem with amicable dispute resolution is that it is not obligatory and additionally entrepreneurs are not likely to subject to its decisions. Additionally, they often hope that the length and associated cost of going to the court will prevent consumers from claiming their rights." (PL/4)*

This is valid also in case of support offered to individuals by the District (Municipal) Consumer Ombudsman. Consumer Ombudsman – apart from the ability to bring a case to a court at no cost (ombudsman is exempted from the court costs) – has only soft instruments at their disposal. Those instruments are aimed at leading to an amicable resolution of the dispute, i.e. s/he can request the entrepreneur to explain or correct its practices, an explanation as in the light of applicable regulations, this situation should be assessed. Yet, as indicated in the interviews, entrepreneurs often ignore Ombudsman's efforts knowing that it has no authority to enforce the decisions. For example, the interviewee working at the office of the Municipal Consumer Ombudsman mentioned a case in which only after receiving a subpoena an entrepreneur became interested in an earlier offered amicable solution. This case seems to confirm that, unless the judicial proceedings become a real threat, there is little openness to engage in voluntary conflict resolution and finding an amicable solution. This was also confirmed by the interviewee, who is a practicing lawyer and in the past worked for a major ICT company, and whose professional experience confirms such attitude. Therefore, it is regrettable that due to the limited funding the ability of the Consumer Ombudsman to engage in civil proceedings – either to use them as a 'whip' to encourage reaching our for an amicable solution or with a full intention to seek justice in the courts - is limited. In this context, Ombudsman's efforts undertaken to offer maximum support within the existing funds are even more commendable. According to the representative of the Consumer Ombudsman office, the Ombudsman tries to use *"other tools aimed to support the consumer, including – in situations when we are convinced that consumer's rights were infringed - supporting him or her in submitting the case to the court"* or apply intermediary modes such as *"joining the already ongoing proceedings or presenting an amicus curiae to the court, which is often used in situations when the Ombudsman notices that the consumer might not do well in the course of the process and decides to write its opinion on the case to the court to present its official interpretation of whether infringement took place or not."(PL/4)*.

Unfortunately, not all consumer ombudsmen have the capacity and expertise of the Warsaw Municipal Consumer Ombudsman. According to an interviewee (PL/4), in comparison to another district/municipal consumer offices in the country, the situation of the Warsaw Municipal Consumer Ombudsman is quite unique.

Whereas the staff number in ombudsmen's' offices is rather limited, the Warsaw office hires 16 employees and engages in a number of cases (See Annex 2 for exact data). In other cities, usually the tasks of the ombudsman are performed by a single person, often lacking sufficient office and financial resources, even to attend the court hearings in different cities. Thus the examples of the consumer ombudsman activity, gathered in the course of the research, should be treated rather as a proof that this institution – if is provided with sufficient resources - could play a much more important role in protecting consumer rights.

At the same time, the length (up to 10 years) and complexity of the civil law proceedings, especially in collective redress cases or group proceedings, not only eliminates a number of less well-off affected individuals but also undermines the very idea of justice and remedy.

Compared to the civil law proceedings, the administrative proceedings appear to be a reasonable and accessible option, especially in environmental cases. In the administrative proceedings, however, the main result is a decision concerning operations of a specific company and not securing compensation or other forms of remedy for people affected by the company. Nevertheless, the administrative procedures, thanks to their foreseeability, are also regularly used by the District/Municipal Consumer Ombudsman. For example, if the Ombudsmen identifies potential infringement of a group of consumers' interest, they refer the case to the Office of the Protection of Competition and Consumers (Urząd Ochrony Konkurencji i Konsumentów, UOKIK). If the case concerns infringement of the telecommunication law, then the Ombudsman can refer it to the Office of the Electronic Communications (Urząd Komunikacji Elektronicznej, UKE). Those referrals are made with the key expectation that the outcome of these procedures - sometimes resulting in the application of substantial fine of deterring value - will take shorter than the judicial route, and, eventually, will stop the negative practice.

In cases concerning environmental law, the administrative proceedings offer an opportunity to stop harmful investment either at the stage of proceedings before the administrative bodies or at the spatial planning stage (see Annex 1). In very extreme cases, the administrative proceedings can be also used in combination with the criminal provisions concerning e.g. corruption regulations. The key limitation in this regard, is the narrow catalogue of subjects (including organizations) that can be party to the administrative proceedings. For example, an organization has to be registered for 12 months, before obtaining a legal standing in environmental law cases. This requirement eliminates any grass root organizations that formed ad hoc by, e.g. members of the local community in which new investment is about to happen. An additional challenge is the need to prove legal interest in being a party to such proceedings. Finally, another challenge is a political pressure created in investment cases involving the interests of large state-owned enterprises. In an interviewee's representing an NGO own words:

> *"Unfortunately in this area, in the environmental law and energy investments, when also companies are state enterprises, it's a big issue, because in many cases it's politicized. In many cases the politics are influencing the authorities to act in certain ways. There are proceedings which are very slow, but there are also crazy fast proceedings. Very often, in the second type of cases, the law is severely breached but nobody really*

cares – the investment has to be made. Of course, fortunately we still have the Administrative Court, which is our strongest ally in such situations, when we cannot trust the authorities. We can always go to court and it's likely that we will succeed there. But very often the investment will be at such stage, that it won't be possible to stop it and take it back."(PL/2)

While administrative courts usually consider such cases with due independence, in practice, their verdicts, just as the decisions of the local authorities, not always are implemented. For example, in one of the cases described in the interviews, even though an investment (a power plant and an open pit mine in Wielkopolska region) had a negative impact on the local water level, still, it was continued. Although the enterprise did not have water permit necessary in case of investment leading to the lowering of the surface of the lakes, the local authorities did not issue any orders to stop its operations. After notifying the police, one of the managers was fined. The local authorities, however, did not undertake any steps.

Finally, an interesting alternative remedy is offered by the OECD National Contact Point (OECD NCP) in Poland, which in 2017 was transferred to the Ministry of Investment and Economic Development. Given the low number of cases handled so far, it is impossible to determine how effective it will prove to be in the longer term, first experiences are positive.

Currently, there are two cases being considered by the NCP, one of which is before the initial assessment and thus its details remain confidential. The other case concerns environment protection, and more specifically the sale of stoves or furnaces in which waste can be burned on an on-line shopping platform OLX. The sale of these products used to be legal, however, they could not be used to burn waste or old, used oil. Thus, the on-line platform was enabling the violation of environmental laws. Frank Bold Foundation submitted a complaint in which it accused OLX of infringing the OECD Guidelines for Multinational Enterprises by undertaking actions leading to the violation of the provisions on protection of the environment and not informing consumers on the consequences of using such stoves. It was noted that despite the NCP location in the Ministry, relatively low experience of the NCP employees who did not have such cases before, the proceedings were of good quality, with NCP taking neutral approach and showing good will on its side. (PL/2)

Importantly, the outcome of this case was positive. The company agreed to change its practice and enter into collaboration with an NGO to be able to implement the decision. Thus, there is a chance that also the future cases will find a positive solution in the amicable way based on mediation.

Overall, the research revealed that despite a number of non-judiciary, amicable ways of seeking access to remedy as well as some positive signals as far as the NCP OECD mechanism and Consumer's Ombudsman support are concerned, the court proceedings remain the only effective remedy available for individuals affected by business-related human rights abuses. At the same time, length of the court proceedings, associated costs, and other elements make this route either ineffective or simply too costly for those affected by the adverse business behaviour to make effective use of it.

3. Major obstacles for victims of business related human rights abuses

The majority of the interviewees stressed the following issues as major obstacles in seeking justice and remedy by victims of business-related human rights abuses:

Length of the civil proceedings and costs

Interviewees were unanimous in stressing that the key problems are not even so much the court costs but the length of the civil proceedings. With the full process able to take up to two years since bringing the case to the court, other costs associated with taking a case to the court multiply. Those costs can include, for example, the cost of legal representation, costs of taking days free from work to attend hearings and costs of travel as well as the costs of the expertise of the sworn expert in the required field. In the opinion of the interviewees, particularly in consumer cases, which de facto are simple cases concerning a warranty, the disproportionally high level of the associated costs and time that needs to be dedicated - compared to the relative low value of the product or service - often discourages consumers from seeking remedy. This is turn encourages unfair market practices and dishonest entrepreneurs, who get convinced that they will not get punished for their unfair behaviour.

The interviewees shared an opinion that simple consumer cases should be handled separately, particularly in cases concerning e.g. a seller purposefully misleading the buyer into the purchase of a product that does not meet the characteristics required by the buyer, by assuring the buyer to the contrary. Otherwise, due to the costs involved, the victims either do not pursue the cases at all or if they do so, the cases clog the justice system.

Interviewees also suggested that in cases concerning simple products of everyday use or uncomplicated services, the use of which does not require expert knowledge, judges should have more space to assess the situation accordingly to their personal experience without the need to obtain an opinion from an expert witness. Such solution would also contribute to keeping the costs at the reasonable level.

Overall, all interviewees stressed that the Code of Civil Procedure needs an urgent revamp, as in its current shape it is overly complex and cumbersome. Currently, the Code of Civil Procedure provides numerous avenues for those intending to prolong the case and tire-off the opponent. The interviewees did not describe an ideal model, yet in one of the interviews, some suggestions did surface pointing to the German model as one which could serve as a good example.

Interviewees also mentioned a need to take efforts to widen the catalogue of subjects allowed to submit a case in administrative procedures concerning environmental cases**.** Current regulations that impose requirement of the 12 months existence thus exclude any ad hoc, grass root organizations that could be otherwise formed e.g. by members of the local community in which a new investment is about to happen, seem to prevent from taking actions those that are most affected in such situation.

The interviewees identified **the lack of obligation to meaningfully and in good faith engage in the non-judicial dispute resolution procedures** as a factor forcing parties to enter the court path and secure justice as well as enforceable

decision. In many cases, the court path is the only way to obtain justice and enforce the judgment.

The majority of the interviewees also pointed at the **unwillingness to act by the institutions that were created to protect various aspects of human rights and the length of the proceedings** which usually last longer than it is foreseen by the Code of Administrative Procedure. In some situations, the way in which the institutions and administrative authorities responsible for rights protection are either not making full use of their competencies and tools available and thus not undertaking correct actions, creates an impression that they try to avoid engaging in a lengthy and laborious procedures. For example, one interviewee mentioned having an impression that in one of the cases referred to during the interview, the court dismissed the claim having earlier rejected a number of evidence and ignored the substantive provision on which the case was made, in order to avoid having to engage in group proceedings. Another example concerns the operating mode of the Personal Data Protection Office (Urząd Ochrony Danych Osobowych, UODO). According to information provided by one of the interviewees (PL/3), in case of individual complaints, in order to verify the situation the Personal Data Protection Office relies exceedingly on statements by the companies, instead of conducting a comprehensive investigation by e.g. ordering a company to submit the recording of individual calls. In such a case, only the recording could be undeniable evidence. However, Office's decision to rely on company statements and not demand the recording means that, in reality, the individual was denied access to just and fair proceedings. Unfortunately, the administrative court, who heard an appeal in this case, did not find that the Office breached its obligations and responsibilities. While the Office stated that it was impossible to engage in deeper investigations in the case of all received complaints, it seems that in this particular case the problem is rather of attitude rather than physical capacity to deal with the number of cases. Especially given the fact that the Polish Data Protection Office has the proportionally largest number of employees among the national EU personal data protection regulators.

I**nsufficient resources and lack of understanding on the side of the local and state authorities** are a real problem affecting the ability to provide protection of consumer rights by the district/municipal consumer ombudsman. As stated in one of the interviews:

> *"The reason why the Ombudsman's ability of engaging in civil proceedings is limited, is mainly due to the limited personnel, unable to engage in the civil court with every single concerning consumer rights violations."(…)*
> *"Even though the Warsaw Ombudsman has 16 employees this is by far not enough given the size of Warsaw and consumers' population. What's more she is in a privileged situation, as in majority of cases Municipal Consumer Ombudsmen are single-person institutions, provided with no support or at best support of 1-2 members of staff, who often do not work full-time. Local authorities often do not see and understand the difference between Consumer Ombudsmen and the tools s/he has at his/her disposal, and the free legal aid provided by the NGOs or other designated organizations. They do not seem to differentiate/ see much of a difference between those institutions/organizations that provide pre-litigation level help (unpaid help from NGOs, emergency help of lawyers, helplines/info lines), and the Ombudsman who as a sole actor in this area has a right of legal standing in the court and can support consumers at this level. This finds reflection in*

very limited financing of their work." (…) *"(…) Even in a really small district (powiat) one person is usually not able to engage in such far-reaching help as help in court. So very often the ombudsmen either limit themselves to providing help in submitting cases by consumers themselves, or they present opinions to the court, but they do not engage in submitting cases themselves, because they simply have no such capacity. The tasks of the ombudsman include first of all providing consumers with advice and information".(PL/4)*

This statement clearly shows that the mechanism and procedure that could provide much relief also to the court system is underfunded, and is not used to its full potential. Additional challenge is that those are not only local authorities that do not fully understand the nature of the consumer ombudsman tasks, but also the judges. Hence much welcomed was information about the plans of developing cooperation between National Judiciary School and UOKIK and Consumer Ombudsman to enable holding internships at the Consumer Ombudsman's offices.

The interviewees mentioned a possibility to apply for the **legal aid** within the regular proceedings or obtaining legal advice from NGOs running the centres of free legal aid. In the case of the free legal representation in the courts, the interviewees noted the low engagement and scrutiny of the lawyers who are not paid enough for the services (compared to the market prices). In the case of providing the aid by NGOs or as free of change consultations organized by the bar associations, the interviewees highlighted that often this help if very limited, does not cover providing legal advice in writing but only orally and does not extend to supporting individual in writing necessary documents to the court

Yet, as it seems, one of the biggest problems is society's low legal awareness concerning human rights, and the consumers' rights, combined with the low awareness of the existing legal instruments. This problem is further aggravated by the lack of visible efforts from the state to change the education in order to include information on these rights. Furthermore, public campaigns that would bring to the attention of society different tools of rights protection are very rare. One of the interviewees mentioned private enforcement as an example of an available tool which is not widely known. According to the interviewee, if he was not a practicing lawyer he would have not known of this tool's existence either.

Finally, it was stressed that sometimes, for different reasons, the real obstacle in ensuring effective remedy is **insufficient expertise and legal knowledge of consumer ombudsmen but also staff employed by other bodies and institutions** aimed to provide protection of human rights. Hence, the interviewees stressed the need for continuous training at all levels. The interviewees stated that often such training was provided only at the beginning, when the institution was created, as in the case of Consumer Ombudsmen or the Personal Data Protection Office, while it should be provided on regular basis. It was also raised that requiring higher legal education (master's level) from a certain group of professionals, such as consumer ombudsmen, could also be a way to improve the quality of services provided.

Overall, while the research revealed a number of very tangible obstacles ranging from the length of the court proceedings and high level of the associated costs, unwillingness on the side of the state institutions created to protect rights, to the

limited human and financial resources, mental approach and low legal awareness of the society in general but also at time representatives of the public administration were found equally limiting. Therefore, the need to improve legal awareness of the society and develop social campaigns to ensure that information about rights and how to seek remedy when they are infringed, was relatively high on the list of solutions to the current challenges offered by the interviewees, together with suggestions to draw lessons from good practices identified both in Poland and abroad, including at the EU level.

4. Good practices

One of the recurring issues in the interviews was the need to adjust the legal provisions in order to provide a better rights protection. Even though some of the interviewees had some non-confirmed information concerning the potential ideas to change the civil procedure, still they were not aware of any official works in this field. What is more, even in cases when potential legal changes concern their field of expertise, they had an impression that they were not being consulted enough and being left out from the discussions.

One of the interviewees stressed that the bottom-up business initiatives – such as codes of conduct concerning data protection or codes of ethics – as long as they are implemented in the meaningful way, can provide some support and improve the situation. The interviewee also noted a business-inspired initiative aimed at developing a model code of ethics as a good example. Yet such model codes will remain of little impact, if the state institutions tasked with approving the individual codes developed by companies do not act timely. According to one of the interviewees (PL/3), a major problem currently is that the Personal Data Protection Office has significant delays in approving the codes. With some of the first codes submitted over six months earlier, it is not a minor delay. The guidance and trainings on GDPR and codes development provided by the Personal Data Protection Office were very valued by market players, who needed and received support at the stage of developing the code, what helped to spur business activity in this area. Therefore the subsequent, several months long delay on the side of the Office at the approval stage, sends a very discouraging signal and has a negative impact on business entities' commitment. According to the interviewee:

> "The original sin is the duration and ineffectiveness of the proceedings. Despite a year having passed there are no codes approved. (…) There are about 30 (codes) prepared, and several are filed for approval by the office already. For example, the 'medical code' was submitted on November 13th, 2018, and yet no decision concerning its approval was taken." (PL/3).

At the same time, some practices existing on the market provide proof that it is possible to devise effective and timely complaints handling system. According to one of the interviewees, one of the debt vindicating companies is capable of responding to all complaints within 7 days since receiving them, including the engagement of the data protection specialist and the lawyer if necessary. According to the interviewee, a lot depends on the willingness of business enterprise and its attitude to handling complaints, but also on the ability to design time- and resource-effective ways of handling complaints, particularly in simple cases.

One of the interviewees noted an example of a good practice concerning the cooperation between a consumer ombudsman and large companies. The company decided to create within the company dedicated posts or units equipped with decision making powers and responsible for liaison with the consumer ombudsman. The main aim of this cooperation was to handle the complaints coming via ombudsman more efficiently, for example, by developing on the basis of the cases in which abuse was notified special protocols on how to handle such cases swiftly and with accordance to the law.

Finally, one of the interviewees pointed to the possible cooperation between NGOs, business entities and state institutions that could improve protection of rights. For example, when new regulations concerning transparency of the credit proceedings and credit decisions were under consideration during the legislative procedure, an NGO "Panoptykon" started the cooperation with the Association of the Polish Banks. Panoptykon submitted a proposal within the framework of the legislative procedure, when the work on the regulation was still at the Parliamentary Commission's stage, and the Association of the Polish Banks did not challenge it, as business saw the value in the increased transparency. It was a typical WIN-WIN situation. In the interviewee's own words:

> *"The NGOs have an important role to play by ensuring and taking care of the transparency of the process, not least in order to stimulate business to respect and protect human rights, particularly since the European law provisions provided possibility for them to initiate cases" (PL/3)*

In the course of the research only relatively limited number of good practices was identified. Quite a few of the good practices recalled by the interviewees were of bottom-up nature, originating in the business circles. One can risk conclusion that to a certain extent – in the vacuum of adequate regulation and sometimes sufficient guidance concerning implementation of legal requirements, with the state organs not issuing decisions within the reasonable time foreseen in law, and yet having to operate in line with the law –more socially conscious and market savvy companies were trying to find ways that would enable them operation in the not too friendly market environment without affecting adversely rights-holders.

5. Burden of proof

Depending on the type of the procedure, the rules concerning the burden of proof differ. According to the Civil Code and Code of Civil Procedure (whose provisions are applicable in the consumers' cases) a person whose rights were affected needs to prove the abuse/violation of his/her rights. While in civil proceedings, court can order delivery of the necessary documents as part of the proceedings, yet at the stage when the case is being submitted to the court the burden of proof is fully on the affected party.

Also standards rules concerning compensation are applicable in this context. A customer needs to prove that the product had a hidden defect to be able to demand compensation for the losses caused by the product. Situation is somewhat different in cases concerning warranty (orig. *rękojmia*). According to the Civil Code, if the product's defect reveals within a specific time after its purchase, it is

assumed that the defect was there already at the time of purchase. In this case, the burden of proof is shifted. On the other hand, if a person seeks compensation for the damages caused by the product, the burden of proof rests on the consumer. The customer needs to prove that the product's malfunction caused the harm. This rule is also applicable in other proceedings concerning compensation for damages, e.g. in cases of a car accident.

In the case of a collective redress procedure, in general, each party must be given access to the documents disclosed to the court and relied upon by the opposing party. Additionally, as in other civil cases, the court has also a possibility to grant an order for the preservation of evidence if an application is made before the commencement of the proceedings. In this case, however, there is a risk that obtaining evidence may become impossible or excessively difficult.

In administrative proceedings concerning environmental cases, if an individual or an NGO wants to confront the investment, they need to challenge the content of the special environmental impact assessment report prepared and paid for by the investor. The investor presents such a report to the environmental authority, and then the report becomes publicly available in the course of the public consultations. This provides an opportunity for an individual or an NGO to prepare a contra-report referring to the key aspects of the planned investment. On the one hand, a preparation of this report requires expert knowledge and can be resources-consuming, but on the other hand it can be also quite effective tool to influence the process of issuing the environmental decision. To some extent information provided in the non-financial reports might be helpful in gathering evidence for the purpose of the contra-report, yet companies are not bound to disclose all relevant documents. Furthermore, only a small number of companies is obliged by law to provide such information publicly.
Once the report is submitted, the relevant authority has to ensure that additional evidence is gathered to identify the factual situation.

Generally, according to the Code of the Administrative Procedure, in case of the administrative proceedings obligation to collect necessary evidence to issue just and fair decision rests on the organ of the public administration. Yet, unfortunately, as indicated by the majority of interviewees (PL/3 and PL/4), the administrative institutions created to protect specific rights are not always fulfilling their mandate effectively. For example, according to one of the interviewees, the Personal Data Protection Office, even though it is equipped with the necessary instruments by the law, including the right to enter the premises with the Police or use coercive measures, and has a large number staff to handle all incoming cases, does not fully use their competences. As stated by the interviewee:

> *"Polish* Personal Data Protection Office *employs the biggest number of staff, after Germany, in the entire EU, so it does not seem that the length of proceedings is caused by insufficient financing. It is rather the lack of effectiveness of management, procedures, mentality and approach.'' (PL/3)*

Additionally, individuals or organs representing them can also use special regulations. For example, the Act on Counteracting Unethical/Unfair Business Practices provides possibility to sue on behalf of a larger group of applicants.

What is more, like certain other legal acts it provides provide for the reversed a burden of proof. For example, according to the Act on Counteracting Unethical/Unfair Business Practices if an unfair market practice has been applied to the consumer, the entrepreneur has to prove to the contrary. The consumer ombudsmen use these provisions regularly, as evidenced by the information provided by one of the interviewees (PL/4). Unfortunately, in practice, some courts do not always apply those special provisions, including ones concerning the reversed burden of proof. This might result in the dismissal of all evidence and the decision that no sufficient evidence was presented, as happened in one of the cases (concerning energy providing company) referred to by one of the interviewees (PL/4) This practice led one of the interviewees to a striking observation that: The interviewee had very strong feelings about it

> *"One has a feeling that the court of the first instance simply did not want to conduct all the burdensome evidence proceedings – because it is long and difficult." (PL/4)*

While such court decisions can and should be challenged, it nevertheless requires a party to have sufficient determination and funds to appeal to the court of the second instance (appellate court) against such decision, requesting that the Court of the second instance, which has authority to do so, overturns the ruling, as happened in the aforementioned case concerning energy providing company.

Overall, the interviewees seemed to be unanimous in the opinion that while the existing provisions concerning burden of proof are clear and logical, they could profit from some improvements as far as burden of proof is concerned and in case of the group proceedings – to mitigate against the capacity difference between an individual consumer, a physical person and a company, which often can rely on the activity of an internal legal team. However it was the attitude and at times - what seemed - purposeful interpretation of the existing provisions applied by the public institutions created to protect rights, that was mentioned by majority of the interviewees as a major obstacle. Interviewees mentioned having impression that one of the key a reasons why in situations when the burden of proof should be reversed from the start (as for example in some cases mentioned in the following chapter), but was not, was unwillingness of a given institution/judge having to take on an laborious and difficult task of securing relevant evidence and carrying a complex case themselves,

6. Collective redress

Although the procedure for class action (when claims of the same type, based on the same or similar facts, are pursued by at least ten individuals), was introduced in Poland already ten years ago[1], it is very rarely used in practice. Out of four interviewees examined, only one – a lawyer from the office of the Municipal Consumer's Ombudsman – had first-hand experience with the procedure. She described it as *"very large, difficult proceedings, requiring ability to digest huge amount of documents, ability to manage contacts with all people engaged in the*

[1] Act of 17 December 2009 on pursuing claims in group proceedings (orig. *Ustawa z dnia 17 grudnia 2009 r. o dochodzeniu roszczeń w postępowaniu grupowym,* Dz.U. 2010 nr 7 poz. 44, available at http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20100070044

process, and to determine various decisions." (PL/4). The collective redress cases concerned mainly the use of unfair and unlawful provisions of the contract, i.e. the forbidden clauses or the currency clauses. Several proceedings concerned also specific insurance instruments, i.e. insurance products with an insurance capital fund or investment-insurance products that also raise major legal uncertainties.

Low popularity of the procedure stems partially from the fact that group proceedings can be applied only in selected types of cases, such as cases concerning claims for liability for damage caused by dangerous products, liability for torts, liability for non-performance or improper performance of contracts, for unjust enrichment and with respect to consumers protection, as well as other claims. As far as claims for the protection of personal rights are concerned, they are generally excluded, unless they relate to claims for personal injury or illness or claims raised by family members of a person deceased as a result of the injury or illness. Yet, even when it comes to the claims for damages, the scope of the proceedings is limited solely to determination of the defendant's liability. In case of group proceedings concerning pecuniary claims, they are admissible only if the values of individual claims are standardised, which further limits the number of cases.

At the same time, there was no clear conviction among the interviewees that expanding the scope of cases that can be raised in the group proceedings is needed. Particularly in cases concerning environmental law it was stressed that for now Article 323 of the Act on the Protection of the Environment seems to offer sufficient protection.

Furthermore, the proceedings require one of the claimants to act as a representative and conduct the proceedings on its own behalf for the benefit of all the group members. This means, in practice, not only taking the risk of incurring loss and digesting large quantities of documentation but also the burden of coordination and communication with all members of the group[2] and the attorney (unless the claimant is one themselves), whose assistance is obligatory. This, as stressed by two of the interviewees (PL/1, PL/4), makes collective redress both costly and burdensome for individuals in cases concerning consumers rights.

The research pointed out to the important role played in this context by the district (municipal) consumer's ombudsmen, who have legal standing in the court and may act as a group representative within the scope of their authority, if they decide to take up a specific case. However, even the consumers' ombudsmen with the support provided by their office is not able to conduct such proceedings alone, and usually reaches out for the support of external law firms. Sometimes a group of affected consumers comes to the ombudsmen already with an appointed representative - an attorney ready to conduct a case.

As was stressed by one interviewee with vast practical experience in such cases, the consumers' ombudsman has a very unique position as the only subject who –

[2] It should be noted, that each of the complainants needs to opt in and his/her action needs to be approved by the court. Additional members may join within a limited time frame, i.e. once the court decides about admissibility of a group proceeding in a particular case, the decision is published and any future potential members of the group are given a specific deadline - one to three months - within which to file a declaration joining the group. Yet if they do not do so, the commencement of group proceedings does not prevent those who did not join the group or who have left it from bringing such claims against the defendant on their own.

in practice - can take on the burden of communicating with all of the affected, and ensure greater predictability and stability of the proceedings. The first collective redress case against a bank submitted by the Municipal Consumers' Ombudsman in Warsaw in 2010 is still pending after 9 years. In several cases led by the consumers' ombudsman some of the people affected by the negative business practice have already deceased. Only one case has been concluded so far with an amicable out-of-court settlement, while other ones are still pending.

In the opinion of the interviewee, the length of the proceedings is partially due to the overload of Polish courts, which leads to long waiting time – approx. 9-12 months between hearings and even up to a year between lodging a complaint and the moment when the court proceedings start.

The procedure is also assessed by all interviewees as complex and extremely lengthy, and additionally affected by the ability of the parties to challenge proceedings by submitting complaints against the court's decisions at each stage. That additionally prolongs proceedings and is often used by companies to make the opponents tired and give up. The complaints are heard by the higher courts each time, and before they are considered and come back, months go by before the procedure actually starts. But even the initial, formal stage, during which the admissibility of the class action, the composition of the group, or the necessity to secure a deposit are decide, is assessed as definitively lasting too long and requiring simplification. The interviewee suggested changes in the procedure that e.g. would render some of the court's decisions appealable only once during the whole proceedings.

Another element affecting the length of proceedings and, thus, efficiency of the procedure, is the insufficient use of the available tools by the courts. It was recalled by one of the interviewees that out of several cases currently pending, only in one case the court has requested trial and hearing assistance from other courts at the stage of the evidence gathering. That has significantly shortened the time (and cost) of hearings with the affected individuals, at the same time making it less cumbersome for them to attend courts nearby the place where they live.

It should be noted that the municipal consumers' ombudsmen would be much more restricted in their actions, due to limited resources and possibility to allocate public funds to certain causes, but for the affected individuals' commitment. They enter the agreement with the ombudsman, create funds to cover the costs of professional legal assistance or provide guarantee funds in case the case is not decided in their favour. While the ombudsmen are exempt from court costs, however, it differs as far as the deposit is concerned. In cases like this, where a deposit is to be paid, usually members of the group collect the funds in case the case is lost. While it was deemed inappropriate for such deposit to be covered from the public funds and hence why the agreement between ombudsman and the members of the group, yet in practice this limits the number of cases in which the consumers' ombudsman could be involved.

Due to the fact that the procedure last so long, parties often undertake efforts to use other means of seeking remedy or, at least, terminating the abuse. As pointed out by the interviewees nr 1 and 4, in cases where the interests of a larger number of customers are affected, it is recommended that the Office of Competition and Consumer Protection (UOKIK)[3] is notified. If it determines that a company

[3] Official website of the Office of Competition and Consumer Protection, www.uokik.gov.pl/home.php

infringed the collective interest of the consumers, it is easier for the individuals to make use of, for example, the private enforcement procedure. In this procedure it is not necessary for the individual breach to be proved, but it is enough to indicate that there was a collective breach, which leads to the reversal of the burden of proof. The pressure is thus put on the entrepreneur to provide evidence that the rights of individual were not affected adversely. Additionally, the Office of Competition and Consumer Protection can introduce fines or start antimonopoly proceedings that also act as a deterrent.

To make group proceedings more effective but also to lessen the pressure of the burden of proof, the district/municipal consumers' ombudsman in particular cases aims to make use of the Act on Counteracting Unethical/Unfair Business Practices[4]. It provides for the reversed burden of proof, so it is enough to report that an unfair market practice occurred to the consumer.

Overall, all interviewees stressed that the potential of the collective redress is underused in Poland. This is mainly due to the fact that it can be used only in very limited types of cases, while at the same time, the complexity and length of procedure results in proceedings lasting years. What in turn undermines the effectiveness and timeliness of this access to remedy path.

7. Cross-border liability

Some of the interviewees stressed the problem with ability to hold parent companies accountable for the actions of their daughter companies and subsidiaries due to the corporate veil protection and protection it offers to multinational companies. It was also noted that the move towards mandatory human rights due diligence legislation might, over time, lead to improvements in this area.

There was also a general consensus among the interviewees that in cases of cross-border liability, as long as the case concerns companies headquartered in the EU territory, it is usually relatively easy for EU citizens to obtain protection, also for consumer rights. It happens so due to the law harmonisation but also the existence of special institutions and organs, whose competence is to ensure the protection of rights. A notable example is the European Data Protection Council, to which all data protection trans-border cases should be directed. Another example is the European Consumer Centre, where e.g. Polish consumers, whose rights were affected by EU-based companies, are provided with the relevant support. While this is happening with the exclusion of the judicial path and additionally there was no evaluation undertaken of its effectiveness, there is a conviction that this system works relatively well.
Situation seems to be somewhat more complex in cases concerning protection of privacy and personal data, yet the fact that there is only one regulation that governs data protection in Europe was indicated as a very positive development. The complexity stems rather from the fact that not only the key players are often registered outside of the EU territory (e.g. Facebook, Google), but also – owing to the current regulations and the fact that every EU country has its own regulator –

[4] Ustawa z dnia 23 sierpnia 2007 r. o przeciwdziałaniu nieuczciwym praktykom rynkowym, Dz.U. 2007 nr 171 poz. 1206, available at

can practice 'forum shopping'. If the companies operate across several countries, they usually choose one – most optimal from their point of view, which, for various reasons, is often the Irish regulator, – as suggested by one of the interviewees is considered among the experts as rather ineffective, quite costly, and slow. Due to the changes introduced by General Data Protection Regulation (in Polish: Rozporządzenie Ogólne o Ochronie Danych Osobowych; RODO)[5], a case against such company has no longer to be considered only by such a 'chosen' regulator. This paved the road for a case that resulted in a 50-million fine imposed on a IT giant by the French regulator, which is, however, likely to make its road to the Court of Justice of the European Union.

Unfortunately, the possibility of joint actions and cooperation between different national regulators provided by the General Data Protection Regulation seems to be unused. This might be due to the strong attachment of national regulators to the traditional territorial approach, additionally enhanced by the unwillingness – particularly in the case of the Polish regulator, to undertake efforts which are not absolutely necessary (e.g complaint by one of the NGOs that had a cross-border aspect was passed over to three other regulators but was not considered by the Polish regulator). As in many other cases, effectiveness of the proceedings is an issue, yet the interviewee most familiar with this area expressed a view that the pressure from business is likely to act as a stimulator of more effective proceedings, as business will start to choose those regulators that are more competent to handle complaints concerning data protection against them. That in turn might result in the decisions issued by such organ getting more resonance and thus having positive impact also on the way the law is applied by the Polish regulator.

As mentioned above, the existence of the European Data Protection Council is also seen as a positive development and a strong advantage, with all trans-border cases being directed there and with decisions being voted by majority, which enables avoiding stalemate. According to the interviewee:

> *"This has a chance of developing more unified interpretation and implementation – as those opinions, while not binding, are usually implemented, and also courts start to refer to them in their judgments."(PL/3)*

More attention and pressure should be however exerted on the national regulators to ensure that they consult the European Data Protection Council to limit the atomisation and differences between verdicts. In the course of the research one of the interviewees stressed being aware of at least one case when the Polish regulator questioned operations of a data base operating company, but did not consult the European Data Protection Council and also remained immune to arguments that other regulator applied different interpretation.

While ensuring protection of individuals in cross-border cases within the EU might be more complex, yet it seems to be working, all interviewees indicated that as soon as a company has a seat outside of the EU, securing protection of rights becomes almost unmanageable. In particular, consumers can hardly count on any support from state organs. The only 'consolation' is in the fact that if a subject

[5] General Data Protection Regulation (EU) 2016/679, OJ L 119, 04.05.2016; cor. OJ L 127, 23.5.2018.

from a third country will try to execute an unfairly concluded agreement, it will find it difficult to enforce payment of the alleged price.
Only the representative of the consumers' ombudsman office indicated that while it can be disputed that it has legal standing to submit cases to the courts abroad, given that its legal standing has roots in the Polish Code of Administrative Procedure, there are efforts undertaken currently to test it in practice in relation to abuse of consumer rights by Internet-based shops. It remains to be seen if this effort will bring expected results.

Overall, while stressing the fact that holding parent companies accountable for the actions of their daughter companies and subsidiaries encounters a number of challenges, all interviewees expressed conviction that within the EU – not least thanks to the harmonization of the law - rights-holders, including consumers are provided with a reasonably well working accessing a remedy. They can also make use of help at the EU level when seeking redress outside of their own home country. Additionally, some areas of consumer rights and human rights (e.g. personal data protection) – given specific regulations – seem to be given better protection than others. Situation concerning position and ability to access remedy in case of entrepreneurs from non-EU countries was assessed much worse. Yet no clear suggestions regarding how to address this challenge were provided.

8. Conclusions and ways forward

The most frequently recurring themes were the complexity and length of civil proceedings, significant legal costs, restricted legal standing (in environmental law cases), the lack of engagement on the part of the organs established to ensure protection of certain rights. Those problems are coupled with the lack of other truly effective non-judicial procedures that would guarantee the execution of the decisions and rulings issued by organs. The interviewees pinned their hopes on administrative procedures of the Office of Competition and Consumer Protection (UOKIK) and other organs which are entitled to impose substantial fines and oblige parties to cease activities that have negative impact, but also on strengthening such institutions as district or municipal consumers' ombudsmen.

Among the postulates shared by all interviewees, simplification of civil procedure was always at the top of the list, together with increasing discretional power of judges in simple consumer cases. Some of the interviewees also suggested introducing either special courts or special procedures, which would, for instance, require mediators' involvement or another organ, more neutral towards the consumer than judges but whose decisions would be delivered without undue delay and be final. There is also a need for amendments concerning the class action procedure, as in its current form it is lengthy, highly formalized, costly and far from being efficient and effective. One of the interviewees suggested that even simple changes could improve the situation significantly, e.g. decisions could be made appealable only once in the whole proceedings.

It is necessary to strengthen the role of the consumers' ombudsmen. At the moment their potential is heavily underused and not sufficiently understood, in part due to the low legal awareness of local authorities and their limited resources. This results in insufficient number of staff, resources and time allocated to the consumer's ombudsmen, what in turn leads to the fact that the work of

ombudsmen on the national scale is not entirely homogeneous and universally well conducted. Thus, there are signals of some doubts as to whether this is an institution that is needed at all. While in practice this situation could be easily remediated by increasing the resources (finances, staff number), introducing requirement of the higher legal education and improving access to relevant training. There are also some signals from the Ministry of Justice about the idea of possible inclusion of ombudsmen into a new system of unified administration (Polish: *administracja zespolona*), similarly to Trade Inspection. This would mean that the ombudsmen would operate at the higher, regional level (instead of district level), which not necessarily would be a solution to any of the existing problems. The efforts aimed at modifying the institution of consumers' ombudsman, without first giving it a chance to make use of the tools it has at its disposal by strengthening its financial and human resources, seem to be, however, premature. Furthermore, the ombudsmen themselves should be engaged in the discussions concerning potential changes. It is thus recommended that, first, local authorities should provide adequate resources to the consumers' ombudsmen. Secondly, judges who hear consumer cases should be encouraged to get traineeships in consumers' ombudsmen offices to help them understand the challenges and nature of such cases and to enable them deciding on them with greater understanding in the future. Interestingly, one of the interviewees suggested creating a pan-European network of consumers' ombudsmen, equipped with stronger powers and ability to make final decisions in simple cases, and falling under the European Consumer Ombudsman. While this idea did not seem to resonate as recommendable with the representative of the municipal consumers' ombudsman's office, the underlying idea of developing a procedure that would allow quick processing of simple consumer complaints (warranty cases, legal guarantee cases) below certain financial threshold seems worth considering.

In general, all interviewees shared the opinion that unification of law and setting certain standards at the European level had positive impact and often has driven improvement of human rights protection in Poland, and seemed to recommend following this route. Improved coordination and harmonization of laws was indicated as having positive influence, both in national-level cases as well as in cross-border ones (within the EU). It was indicated that more attention should be given to meeting the obligations by the national institutions and, where relevant, consulting with the institutions at the EU level (e.g. the European Data Protection Council).

Last but not least, all interviewees stressed the problem of **mentality and approach**, as well as – particularly in administrative cases concerning environmental law – insufficient courage to exercise the law also vis-à-vis large state-owned enterprises or in situations defined by the government as "crucial development" etc. This potentially could be tackled – at least partially – with improved and recurring trainings and awareness raising of the state representatives, be it in the Personal Data Protection Office or consumers' ombudsmen offices. Given the high rotation of staff at those institutions, carrying out such trainings at the beginning of the given office's creation is far from enough. At the same time, while many of the ombudsmen are really well prepared for their role - educated, highly experienced and with adequate competencies - there are some that do not raise up to the standard. The already existing requirement of higher education and 5-year professional experience seem to be insufficient. Given the fact that all of ombudsman's activities require application of law, It should be considered to expect of them legal education.

At the same time, more efforts should be undertaken to improve legal education from the earliest years. Furthermore, whenever a new legal tool is provided for individuals, a public campaign should be launched, explaining what rights they have and how this new procedure can help them protect their rights.

Finally, NGOs should be encouraged and supported, also financially, to engage stronger in ensuring transparency of the state organs, such as the Personal Data Protection Office, not least by demanding information about the effectiveness of the protection they offer. At present there is very little information and statistics available that would show the effectiveness level of the national regulator, such as the length of the proceedings, percentage of courts' decisions that sustain organs' decisions. That also results in lack of ability to exert greater pressure on the organs.

Annex 1

Summary description of the legal proceedings in cases challenging permits to intensive livestock installations (and other odor-emitting installations)

a) The type of administrative proceedings

- General course of administrative procedure in Poland may be summarized as follows: 1. Administrative decision is issued by a lower tier administrative authority (***first instance decision***), all entities participating in the procedure may submit an **appeal** within **14 days** from the date of delivery of the decision to them. (In many cases a decision is delivered by publication/announcement on authority's website, in such case it is considered as delivered after 14 days, thus the deadline for appeal is 28 days – 14 + 14). The appellate proceedings are handled by a higher tier authority and are concluded by issuing a *second instance decision*, which is considered as final and binding. The second instance decision is enforceable (unless the second instance decision repeals the first instance decision and refers the case to the first instance authority for reconsideration, which often happens if the appeal is successful). Each party in the administrative proceedings may act on its own behalf or by a proxy (any adult, it doesn't have to be a professional lawyer). The administrative proceedings are – in general - free of charge.
- ***Environmental decision*** (in Poland **EIA** is concluded by issuing a *Decision on environmental conditions of approval of an undertaking,* often abbreviated as environmental decision; this decision is usually the first step in the investment process and is necessary to obtain further permits, including building permit as well as emission or IPPC permit): standing requirements are very generous. An environmental NGO that had been founded at least one year before the proceedings started may join the proceedings at any moment, as well as submit appeals or complaints to the administrative court (even if it did not participate in the proceedings before). However, submitting a complaint to the court is possible only against a decision of the second instance (if there was no appeal against the first instance decision, one cannot submit a complaint to the court). Local landowners may take part in the proceedings, if certain requirements are fulfilled (recently their access to the proceedings was limited). During EIA proceedings we analyze the EIA report prepared by the investor and submit comments, requests, scientific opinions etc. to the authority. EIA proceedings are the best way to stop or postpone any livestock installations as there are many potential legal and factual arguments that can be raised against the EIA reports.
- **IPPC proceedings** – largest livestock installations (e.g. those with more than 40 000 stands for poultry) require an integrated permit (IPPC). In IPPC proceedings the standing rules for environmental NGOs are the same as with EIA. However, local landowners are not allowed as parties to the procedure (they may act via environmental NGOs). Participating in IPPC proceedings requires involvement of experts and is usually much more difficult than EIA procedure.
- **Building permit** – we prefer not to take part in the building permit procedures as environmental NGOs are excluded from them by law and standing of landowners is limited. Moreover, in building permit procedures mostly technical or construction details are considered, therefore environmental arguments are usually irrelevant.
- In case of **existing installations** several types of proceedings may be considered. One option is to request the Regional Inspectorate for Environmental Protection to carry out an inspection or control. However, when it comes to livestock farms, there are other

administrative bodies, e.g. provincial veterinary inspectors and health or sanitary inspections. Acting as environmental NGO and/or representing local landowners, we may ask for several types of proceedings to be initiated, depending on the situation. That includes administrative proceedings for withdrawal of the IPPC permit or for the suspension of operation of installations, and (in some cases) penal proceedings may be initiated as well.

b) The type of legal or factual arguments on which the challenges can be based (and whether these included, or could include, violation of IPPC rules, nitrates pollution, other kinds of water contamination, air pollution or the violation of animal welfare standards);

- In EIA (environmental decision) all arguments based on protection of environment, including air, ground, water, species and habitats, as well as public health, may be used. Also, specific rules on management of animal waste or fertilizers are usually important. Moreover, there are many formal requirements that have to be met by the EIA report and it is usually possible to point at least some discrepancies. Animal welfare standards are rarely used here but we may explore it further – it would be actually a very interesting option. In IPPC proceedings the aforementioned 'environmental' arguments may also be used if we can link them to the specific IPPC requirements set by the law.

c) The type of judicial proceedings following the administrative phase (competent court, kind of order sought)

- Entities participating in the administrative procedure may submit a **complaint to a regional administrative court** within **30 days** since the second instance decision was delivered to them (if delivery was performed by means of public announcement, the 14 days rule applies, so the deadline is 44 days – 14 + 30). The decision remains enforceable, unless the complainant asks the court to suspend it (which may happen if certain conditions are met). Administrative courts are considered *courts of law*, i.e. they do not analyze factual aspects of cases (all arguments have to be of legal nature – one has to point out that the authority violated certain provisions of procedural or substantive law). There is no witness or expert witness evidence, only supplementary evidence from documents may be accepted by the court. Nevertheless, in environmental cases some degree of factual analysis is often necessary and the courts usually accept expert opinions as supplementary documents. After the judgment of regional administrative court is issued, parties to the procedure may request the written reasoning to be delivered to them (in some cases the court prepares it by virtue of law). In the proceedings before regional administrative courts each party may act on its own (without a proxy) or be represented by a professional lawyer – advocate or legal counsel. The court fees in regional administrative court are very low (25-100 EUR court fee) and no additional fees are incurred on a losing party.
- Subsequently, one may submit a **cassation complaint to the Supreme Administrative Court**. The deadline for such complaint is **30 days** since the judgment with reasoning was delivered. The law demands that the cassation complaint be prepared and signed by a professional lawyer (advocate or legal counsel). The court fees are very low but the losing party may be obliged to cover legal costs of the authority, which in most cases do not exceed 200-300 EUR.
- **Challenging local spatial plans** – if a local spatial planning act allows for building industrial livestock installations, it may be challenged to the administrative court (there is no administrative phase of the proceedings, the complaint is submitted directly to the court). Legal standing is dependent on proving that specific legal interest is infringed by

the challenged act. In most cases environmental NGOs are unable to show sufficient legal interest (unless they own a piece of land affected by the act).

- Civil law remedies may be used against existing livestock farms (typically: nuisance lawsuits). Civil law proceedings are usually much more difficult, lengthy and costly, hence we would recommend using them as a last resort option. However, there is a specific provision of environmental protection law that allows environmental NGOs to submit a civil lawsuit against an operator of installation that has significant negative impact on the environment. The claimant may request the court to order limitation of such negative

d) The estimated duration of the administrative proceedings and of the subsequent judicial phase.

- Administrative proceedings – as a rule, they shouldn't last more than 2 months in the first instance and 1 month in the second instance. However, in reality they can last several months (even over 1 year), depending on the administrative organ before which the case is heard and the complexity of the case. It also depends on how quickly the investor submits the EIA report (in cases of issuing an environmental decision) and responds to requests and questions from the organ. In the EIA and IPPC proceedings public consultations, that last 21 days, are obligatory.
- Duration of proceedings before a regional administrative court – from 6 to 9 months.
- Duration of proceedings before the Supreme Administrative Court – from 18 to 24 months.
- The most significant aspect of administrative proceedings and proceedings before the administrative court in Poland is that they may last for years as the decision may be continuously passed between each tier. For instance, in one of the livestock farm related cases the procedure has been running since 2014. The proceedings may be summarized as follows:
    - the 1st instance decision approving the investment;
    - the appeal;
    - the 2nd instance decision repealing the 1st instance decision;
    - the 1st instance decision approving the investment;
    - the appeal;
    - the 2nd instance decision approving the investment;
    - the complaint to the regional administrative court;
    - the judgment repealing the 2nd instance decision;
    - the 2nd instance decision repealing the 1st instance decision;
    - the 1st instance decision refusing to approve the investment;
    - the appeal (submitted by the investor) – etc.

Annex 2

Year	Number of the Warsaw Municipal Consumer Ombudsman's (MCO) interventions with entrepreneurs (registered in the given year)	Number of cases in which MCO assisted consumers in the court proceedings					
		Help in claims pursued in the court individually by the consumers	Number of court proceedings with MCO participation				Number of consumers, who were provided support by the MCO (E+G)
			court proceedings involving MCO in ordinary procedure	Number of consumers on behalf of which MCO submitted the case to the court	Group proceedings in which MCO acting on behalf of the group of consumers started the legal proceedings	Number of consumers making the group	
2009	1 797	139	8	8			8
2010	1 465	115	6	6	1	1 247	1 253
2011	1 497	128	11	11			11
2012	1 476	151	9	9	1	35	44
2013	1 596	102	16	74	1	168	242
2014	1 599	99	11	124	1	99	223
2015	1 892	118	11	107	1	1 720	
2016	1 753	102	9	84			84
2017	1 786	102	10	27	1	907	2 654
2018	1 744	113	9	9			9
TOTAL	**16 605**	**1 169**	**100**	**459**	**6**	**4 176**	**4 528**
IN AVARAGE	**1 661**	**117**	**10**		**0,6**		

Source: Office of the Warsaw Municipal Consumer's Ombudsman