



# COURT MONITORING METHODOLOGY

edited by  
Bartosz Pilitowski  
and Stanislaw Burdziej



Court  
Watch  
Poland  
Foundation

# COURT MONITORING METHODOLOGY



Court  
Watch  
Poland  
Foundation

*This publication was published with the support of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The opinions and information it contains do not necessarily reflect the policy and position of ODIHR.*

Published by Court Watch Poland Foundation

Edited by Bartosz Pilitowski and Stanislaw Burdziej

Designed by Michał Popiela

Cover photo by mira66 (flickr.com),

© ⓘ Photo published under Creative Commons Attribution 2.0  
Generic License (CC BY 2.0).

Printed in Poland by Poligrafus Jacek Adamiak

© ⓘ Published under Creative Commons Attribution 4.0  
International License (CC BY 4.0).

ISBN 978-83-934081-3-9

Toruń 2013



Court  
Watch  
Poland  
Foundation

ul. Szosa Chełmińska 54/2  
87-100 Toruń  
[www.courtwatch.pl](http://www.courtwatch.pl)

# **COURT MONITORING METHODOLOGY**

Edited by  
Bartosz Pilitowski  
and Stanislaw Burdziej



# CONTENTS

<b>INTRODUCTION .....</b>	<b>7</b>
Our goals.....	9
Principles.....	10
Summary of results.....	11
<b>MONITORING METHODOLOGY .....</b>	<b>13</b>
Description of research tools.....	13
Subjective impressions as social facts .....	14
Research tool development .....	15
Observer effect.....	16
<b>VOLUNTEERS .....</b>	<b>19</b>
Recruiting volunteers.....	20
Training volunteers .....	20
Crowdsourcing.....	21
Communication with volunteers.....	22

<b>RESULTS OF HEARING OBSERVATIONS .....</b>	<b>25</b>
Data set .....	25
Data presentation .....	29
Transparency .....	30
Objections to the presence of the public .....	31
Closing the courtroom to the public .....	33
Objections to taking notes .....	39
Respecting the right to a fair trial .....	40
Transparency: privileged access to the courtroom for prosecutors and legal representatives .....	40
Advantages and disadvantages of the method .....	42
Work organization .....	43
Punctuality and reasons for delay .....	44
Treatment of hearing participants .....	47
Cases of judges' rude behavior towards participants .....	47
Reactions to the presence of the public .....	49
Examples of behavior favoring court authority .....	50
<b>MONITORING</b>	
<b>COURT INFRASTRUCTURE .....</b>	<b>51</b>
General picture of court infrastructure in Poland .....	52
<b>ANNEX .....</b>	<b>55</b>
Hearing observation form .....	56
Infrastructure observation form .....	57
Table of charts .....	58

# INTRODUCTION

A look at public opinion polls shows that despite 25 years since the democratic transformation in 1989, the judiciary in Poland still has to gain the trust of citizens. In a recent survey, 61% of Poles expressed an overall dissatisfaction with the justice system in Poland.<sup>1</sup> Other post-communist countries in Central-Eastern Europe experience a similar deficit of public confidence in their justice systems, including the courts.<sup>2</sup> Independent judiciary is a bedrock of any stable democracy. However, widespread negative public assessment of the system of justice may encourage the executive to intervene in a way which could threaten judicial independence. Hence, the urgent need to counter and reverse the increasing alienation of the judiciary from the society, both in Poland and elsewhere. We believe that the fundamental democratic right to an open trial has enormous and underestimated potential. Through their presence in the courtroom as members of public citizens can both exercise social control over the way justice is being administered, as well as get to know how the system works. Firsthand experience of the courtroom helps them shed some of the negative stereotypes, and - in the long run - bring the society and the courts closer together, without any intervention from the legislative and the executive.

Court Watch Foundation Poland was founded and started its first monitoring program in 2010. Since the very beginning our purpose has been to organize monitoring activity in the field of the Polish system of justice - primarily in the courts. Our first project, entitled Citizen Monitoring of Regional Courts in

1 CBOS Survey no. BS/5/2013, *O przestrzeganiu prawa i funkcjonowaniu wymiaru sprawiedliwości w Polsce* [On attitudes to law and the functioning of the system of justice in Poland], January 2013, p. 15.

2 J. Jackson, M. Hough, B. Bradford, T. Pooler, K. Hohl, and J. Kuha, *Trust in Justice: Topline results from Round 5 of the European Social Survey*, London 2011.



Poland 2010/2011, was summed up in a report based on approx. 2,500 hearing observations from over 150 volunteer observers. The report, issued in November 2011, drew the attention of both the courts and the general public through the media. The Polish Ministry of Justice analyzed our recommendations and in a letter addressed to all courts in the country urged the implementation of many of them. After the publication of the report there were a series of meetings with the presidents of courts and with judges, to whom more detailed reports on their courts were presented. The second report appeared in October 2012 based on 5,000 observations from over 500 volunteers and from about 70 courts. This time, we monitored both District and Regional Courts.

This report, the third one (here presented in a largely abridged version) is based on a bigger data set: almost 7,000 observations of court sessions from over 450 volunteers and from 132 courts all over the country. In total, since its formation, the Foundation has trained over 3,000 people, of whom 700 are actively engaged in monitoring. By October 2013, the volunteers had submitted over 16,000 observations of court sessions, and over 1,500 observations on court infrastructure.

The observers – volunteers collaborating with the Foundation – were asked to fill out two simple forms: the first one concerned the procedure of the court session (i.e. issues such as the impartiality of judges, respect for the rights of participants, and basic legal procedures), the second one deals with the infrastructure of the court buildings (e.g. accessibility for the disabled, the availability and condition of toilets etc.). Our method is accessible for anyone who would like to pay a visit to a local court and observe hearings – it does not require any previous knowledge of the law. Indeed, in contrast to other programs, including those undertaken in Poland until now, our project has aimed at encouraging ordinary citizens, and not lawyers or even law students, to visit the courtroom. This allows us to reconstruct the perspective of the average citizens who constitute the majority of court users, and not the perspective of lawyers, who are *insiders* to the system and have a tendency to accept existing dysfunctions as a necessary evil, or even something normal.

An important goal of Citizen Court Monitoring is the legal education of its participants, and also of the wider public. Currently, many Polish citizens reveal a low legal awareness and are fearful when faced with the court. Court Watch Poland Foundation has been trying to break the spell of this passive attitude and show citizens how to effectively control the judiciary while respecting the rule of judicial independence. Over the course of the program over 3,000 people have been introduced to the idea and methodology of court monitoring. During training for volunteers the Foundation emphasizes the rights and duties of citizens in court. Experience shows that participation in the program is an important educational, civic and existential experience for most of our volunteers.

## OUR GOALS

The major goal of monitoring, according to the methodology applied by Court Watch Poland Foundation, is to obtain trustworthy and broad knowledge about how citizens perceive the functioning of Polish courts. This is not another public opinion poll, but a reconstruction of the actual experience of people who have found themselves in court – very often for the first time – yet with no personal interest in the cases observed.

Another, parallel, goal of Citizen Court Monitoring is to educate the observers in the basics of law and to build trust in the judiciary in Poland through facilitating personal contact with the court. It is especially important, since we suspect the causes of the low trust in Polish courts might partly result from a lack of personal experience of the court system. Hence, the image of courts among the wider public is mainly shaped by the media, including staged reality-shows and film stereotypes, not first-hand experience. Interestingly, available data – both from Poland and elsewhere – shows that those citizens who have had direct contact with courts tend to value them more highly than those who have had no contact.

The third goal we aim to achieve is an attempt to initiate a number of positive changes in the way Polish courts operate. These changes, in turn, could help the courts to build trust in the judiciary and the rule of law in Poland. We try to make Polish courts more open to citizens and care more about the societal consequences of their activities. Striving for change that is preceded by research is a characteristic feature of all watchdog organizations, including Court Watch Poland Foundation.

Judges are a unique professional group. It is not by chance that society, while entrusting them with the power of judgment, has granted them also a significant degree of independence. Judicial independence, however, does not mean any lack of supervision or oversight. We do not mean to suggest that social control through citizen monitoring is necessary because judges in Poland are not in any way accountable. However, in comparison to most other professional groups, judges are primarily accountable to other members of their own profession. We hope that an awareness that public opinion cares about the way the judiciary operates will motivate judges better than many administrative measures (which, incidentally, may occasionally undermine their independence). Consequently, negative phenomena could be eliminated, which – even though they only concern a minority of judges – negatively affect the whole group. The right to observe hearings, just as the right to publicly comment on and debate sentences (which in Poland for many, even for some public figures, still seems taboo)<sup>3</sup>, are the only instruments at the disposal of civil society to control the way judicial power is exercised. Engaging citizens and NGOs in this area is the best safeguard against attempts at the expansion of administrative supervision, which might threaten the separation of powers.

---

3. Stanisław Burdziej, Bartosz Pilitowski, *Czy wyroków sądu się nie komentuje? [Is it inappropriate to comment on the court's sentences]*, "Rzeczpospolita", June 25, 2012.

## PRINCIPLES

In our opinion, many improvements within the justice system as widely understood require not so much financial investment or legislative change, but a transformation of mentality and social practices – not only amongst judges, but also amongst other representatives of the legal profession, and the wider public too. These changes are “cheaper” than legislative or infrastructural changes – they do not require extra investment. They are also much more effective, since passing laws inconsistent with social norms does not bring expected results. They are also changes which the judiciary can implement on its own without involving other public bodies. It is worth stressing that the judiciary is not unique in this regard – the idea of citizen watchdog activity can be and has been carried out in many other areas. It is the Foundation’s view, however, that changes within the judiciary are of key importance. Overcoming structural problems in this area could have a significant spill-over effect in many other areas of governance, and directly lead to the increased well-being of society. It is also a way to more fully implement art. 45 of the Polish Constitution, which refers to the common need for *justice*<sup>4</sup>.

Our methodology obviously has many limitations. Many have cautioned us that volunteers without an extensive legal background are unable to see the truly important issues, focusing instead on the largely less important “proxy” issues (e.g. punctuality or judicial demeanor). We are aware of these limitations. Citizen monitoring – of the judiciary, as well as in other areas – can merely supplement the accountability mechanisms of other bodies – primarily the State, but also those social environments which are being monitored. It often draws attention, however, to issues that escape their scrutiny, since it is based on the empirical experience of the people whom the monitored institutions are supposed to serve.

Watchdog groups and organizations concerning the judiciary have been present in Western countries for years. In Poland the activities carried out so far have been mainly expert-led and tended to focus on some crucial, albeit narrowly defined issues. For instance, the monitoring of Commercial Courts carried out in 2008 by the Helsinki Foundation for Human Rights (HFHR) was a one-off action – even though it had the largest scope, as it encompassed 108 Commercial Courts all over the country. Similar monitoring programs were piloted by INPRIS (Institute for Law and Society), and they included such prominent institutions as the Constitutional Tribunal. The observers, however,

---

4. Article 45 of The Constitution of the Republic of Poland:

1. Everyone shall have a right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.
2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

were usually thoroughly trained law students. From our point of view it is important that the volunteers visiting the courts represent a level of knowledge on the subject of law closer to that of an average citizen. A person with legal education, especially one who frequently deals with courts, will take many set practices for granted. Our observers, mainly undergraduate students of law or social studies, could be described as “cognitively naive”; they are more likely to see the problematic nature of some well-established practices.

## SUMMARY OF RESULTS

This publication includes a summary of the key findings from hearing observations carried out between July 2012 and July 2013. The present English edition is an abridged version of our third report; full Polish versions of all three editions, including the latest one (2012–3), are available online at [www.courtwatch.pl](http://www.courtwatch.pl). They all include English summaries. The main goal of this publication is to present our method rather than systematically present and analyze our findings.

Below we present the most important findings based on hearings observed between July 2012 and July 2013:

- 45% of hearings began late;
- in the case of delayed hearings, in 78% of cases the judges did not give any reason for the delay, nor did they apologize for it;
- in 6% of the hearings the judge had objections to the presence of observers in the courtroom or to them taking notes;
- in 11% of the hearings the public prosecutor or the attorney representing at least one of the parties was present in the courtroom before the hearing began, during the break or after it had finished, while the door to the courtroom remained closed for the rest of the participants;
- in 2% of the hearings, according to observers, the judge did not provide an equal opportunity for all parties to present their cases.

Similar to previous years, transparency and openness were the main focus. Our observers are instructed not to introduce themselves as observers collaborating with the Foundation, but as “general public unrelated to the case”, in order to avoid treatment different than ordinary citizens receive. Over the last three years, we have observed a fall in the number of situations where the observers were refused entry to open sessions. Generally speaking, it can be seen that judges and court staff are getting used to the presence of the public and/or our observers. However, our report documents a relatively large number of cases where courtroom access for citizens was in many ways restricted – starting with court security, through the denial of access to public information (e.g. the case list), and ending with judges interrogating the public in detail over the purpose of their presence in the courtroom.

Here are some of the most important findings concerning court infrastructure, based on observations carried out between July 2012 and July 2013:

- 16% of court buildings were not accessible to the disabled;
- there was no metal detector in 12% of court buildings;
- in 29% of the court buildings finding a toilet required going to another floor or another building;
- 20% of court buildings did not have any separate facilities to read files.

Various restrictions on court and courtroom access that citizens face remain a major problem which is related to how court infrastructure operates. In many courts, people entering the building had their ID checked by security or were questioned – in some cases their personal details were put on record. On single occasions, security asked them to produce a summons or required permission from the Chief Justice to participate in the hearing as a member of the public. Occasionally, secretaries denied access to public information about the hearing schedule for the day, or observers were informed that in order to participate in hearings as a member of the public, one had to obtain a special permit.

This year for the first time we have been able to document the impact of our observations. We have noticed a significant improvement in regard to some issues. For example, in the second cycle, only 46% of all hearings monitored started on time. In the third cycle – 55% started on time. It is also worth noting that the judges apologized more often for (and/or explained) the reasons for delays. Likewise, public prosecutors much more rarely went inside the courtroom and stayed in it with the judge, while other participants waited outside and the door remained closed. This change is particularly clear in those courts that have been monitored by us most intensely over those three years. These conclusions show that citizen court monitoring can be a very effective tool towards reducing or eliminating some negative practices that curb citizens' trust in the judiciary.

# MONITORING METHODOLOGY

Court monitoring employs methods that are commonly practiced in the social sciences, primarily open participant observation. Our volunteers undergo only a short period of training including on the organizational structure of the Polish judiciary, rights and duties of trial participants, as well as the methodology of court observation. They are usually people without a thorough knowledge of the law (although some are law students), which – as we assume – allows them to look at the reality of the courtroom with the eyes of an average citizen. After training, our volunteers decide themselves when and where they will go to court and what court they will go to. Some even decide to go to the Supreme Court. They also randomly decide which hearings they are going to monitor. This means our sample – while large – is not strictly representative for all courts in the country. For instance, observers relatively rarely hear family cases or those involving minors, because they are often closed to the public.

## DESCRIPTION OF RESEARCH TOOLS

Our observers use two separate questionnaires. When filling in the one that deals with court infrastructure, the volunteers pay attention to whether the court building is clearly marked and accessible for the disabled, how the security staff work (e.g. what are the existing security procedures, such as using metal detectors), whether personnel are wearing ID badges and willing to help court users, and also whether the building has easily accessible public toilets equipped with toilet paper and soap. We assume that these – sometimes mundane – issues can, and quite often do, discourage citizens from dealing with courts. The second questionnaire concerns the hearing itself and includes the

following questions: access to information about the case (courtroom number, starting time), whether the case list schedule matches the actual schedule of hearings (especially whether a hearing actually took place), punctuality, the presence of those who are not part of the courtroom staff before the hearing begins, judges' reactions to the presence of the public (and our observers), the demeanor of the judges, and the way the sentence is explained to the parties.

Both questionnaires are attached to this report.

## SUBJECTIVE IMPRESSIONS AS SOCIAL FACTS

Some of the questions our volunteers were asking in the courtroom proved controversial to the judicial community. A few of them have been criticized by judges with whom we had the opportunity to consult about the questionnaire. Many doubts were raised especially in regard to the question whether the judge seemed prepared for the hearing; judges questioned the ability of observers to accurately assess it, and pointed out numerous factors, outside of their control, which may disorganize the hearing and make a judge seem unprepared. We need to stress that we recognize an observer is not competent enough to evaluate the actual performance of a judge on merit. However, this is not what we have been asking our observers to do. We are basically interested in the subjective perceptions our observers have. Their assessment of the situation will inevitably be subjective (and not always accurate!), but citizens also experience the court subjectively. In Poland many people (including some judges) believe that "half of the people will always be dissatisfied when leaving court". We do not agree with this statement. We are convinced that one can leave court with an impression that the law has been administered fairly, even when they have lost the case. A lot depends on the way citizens are treated, whether they are allowed to speak, and given a clear explanation of judicial rulings.

Our approach in this regard is informed by sociological and psychological theory. Social science is based on a premise that even subjective perceptions ('definitions of situation') lead to objective consequences, e.g. in the form of particular behavior. Thus, we take into consideration not only objective facts, e.g. that a judge did justify their sentence orally, but also social facts, e.g. that he or she did it in an unclear way, a subjective evaluation from the public gallery. The way judges fulfill their duty is important; recent psychological research indicates that 'procedural justice' (i.e. how people are treated and whether they are able to present their own case) is not only distinct from 'distributive justice' (i.e. satisfaction with the decision itself), but indeed, may be more significant for how the performance of courts and other authorities is evaluated.

## RESEARCH TOOL DEVELOPMENT

The basic concept of monitoring, as well as the research tools employed, has remained the same since 2010. When the research tools were created, we assumed that:

- questions need to be simple and clear to people who are not familiar with legal jargon and the court system,
- questions should fit one A4 sheet of paper so that volunteers can easily print/copy the form,
- questions should be of the yes-or-no type, to allow basic quantitative analysis,
- the reverse of the observation sheet should remain blank and serve observers as a space to take auxiliary notes and make spontaneous remarks.

Every year the observation sheets (see attachments) are slightly amended due to numerous suggestions both from observers and the judicial community. These changes consist in instructions and hints for observers. Occasionally, the wording of the questions is improved. For example, the previous yes-or-no question about whether the oral justification of a sentence was clear, now requires the observers to choose one option out of five. Hence, they are asked to decide whether a judge “explained the reasons for his or her decisions in depth and in a clear way to participants”, “did it clearly but only briefly”, in a manner “unclear for the participants”, “only quoted the legal grounds, but did not explain why he or she had made such a decision”, or even “did not provide any justification for the decision at all”.

The observation form includes a question on whether relevant information is easily available inside the court building; for example, does the notice board include information on the whereabouts of the Chief Justice and all court divisions. Other questions are supposed to check the efficiency and politeness of court security (e.g. whether the court is equipped with a metal detector, and how it is being used), as well as the existence of a Customer Service Office (CSO) or an information desk. Observers checked the efficiency of the service at the CSO. As in previous years, they asked in which room a particular hearing would take place, and inquired about the possibility of receiving a court-appointed counsel in a case of compensation for damage. Obtaining an appropriate answer to both questions was taken to indicate efficient service. During the third monitoring cycle these two questions were separated. Due to numerous comments from observers who reported a number of problems concerning the accessibility and availability of public toilets, the most recent monitoring included additional questions designed to provide more detailed information (e.g. “when standing in the lobby, can you see where to find the toilets?” and “does finding the toilet involve going to another floor?”).



In Poland, apart from CSOs, there are other offices (secretariats) that to some extent deal with users. When evaluating the service received from these, observers now pay attention to which court division a given office handles. Even though most infrastructural issues that we monitor concern the organizational culture of the whole court – the performance of different court divisions can vary significantly. Therefore, concerning several questions like the wearing of ID badges by court office staff, or the availability of information on the case list for the next day, we try to be more specific and look at particular court divisions, not the court as a whole.

Questionnaires are modified in such a way as to enable us to compare over time the largest amount of data possible. In order to allow this, certain questions – those used for long-term comparative analyses – remain unchanged. Changing the way a question is phrased can produce different answers, so we are very careful when comparing answers to questions that have been edited at some point.

## OBSERVER EFFECT

Every research tool in the social sciences has its own limitations. The results obtained are always affected by the way a question is phrased, by the social characteristics of the person who conducts the survey, by the situational context, etc. This is also true of our research. While we try to identify and control any bias in our sampling and volunteers, our research differs from much standard social research in several ways. Firstly, our aim is not only to establish facts, but also to influence the studied area, i.e. the court system, in order to foster transparency and public accountability. Secondly, we view our monitoring program as *action research*. Action research is that where researchers *assume* they will be trying to intervene in the studied area. Equally important, they do so in partnership with the subjects of their study (in our case – the judges, prosecutors and court staff). Typically, these subjects take part in drafting research tools, revising research questions, and discussing the results. For that reason, we have presented our findings at many judicial forums (conferences, journals, meetings) and included many of the comments received from them while improving the questionnaire or analyzing the findings. However, such an approach does not release researchers from the duty to respect general methodological principles, including trying to identify any possible bias. To that effect, in 2012 we commissioned an external evaluation of our project to assess the impact of the public (our observers) on the course of a hearing.<sup>5</sup> This impact proved hard to measure, especially given the relatively short duration of the project. We keep hearing from our observers that when declaring their cooperation with the Foundation it secures them preferential treatment from

5. A. Peisert, "Ex-post Evaluation of Citizen Monitoring of District and Regional Courts 2011/2012", in: B. Pilitowski, S. Burdziej (eds.), *Citizen Monitoring of District and Regional Courts 2011/2012*, Court Watch Poland Foundation, Toruń 2012, pp. 31-43.

court staff. On the other hand, some tell us about judges who perceive them as intruders, and order them to leave the courtroom. Below we illustrate both situations, with comments provided by the observers:

---

*When I asked my question, the woman at the CSO enquired in a rather unkind manner who I was, what was going on with all those questions, because **I was the third person to ask the same thing**. She suspected that it was about some sort of Foundation. When she learned that it was about court watching for Court Watch Poland she was very kind. She provided information on what to do in order to receive a court-appointed counsel. I also received a template of an application form to obtain a court-appointed counsel, along with a statement on financial status, income, and personal and living expenses.*

Szczecin-Prawobrzeże and Zachód (West), Pl. Żołnierza Polskiego 16

---

*People at the information desk must have recently heard many such questions (you could tell by the look on their faces), as **many volunteers carried out observations** in this court, that is why the findings can only be partly reliable. However, the woman was very kind and made the effort to find out what kind of help was necessary and what had happened. She indicated all the options and informed us about difficulties with deadlines. A professional and kind service.*

Kraków-Nowa Huta, 7 Przy Rondzie St.

In previous years it occasionally happened that judges – surprised by the fact that the public were present in the courtroom – ordered the public to leave, on suspicion that they could themselves be called as witnesses later on in the case. Since then we have asked our observers to dispel any doubts and introduce themselves as “members of the public unrelated to the case” or to simply inform the court that they will not be called on to testify and they are not related to the case in any way.



# VOLUNTEERS

One of our fundamental assumptions when establishing the Foundation and launching the program of Citizen Court Monitoring was, quite obviously, engaging the largest number of citizens. We hoped in this way to help empower Polish citizens in their dealings with the judiciary. Participating in monitoring was to serve as an opportunity for first-hand contact with the court (usually for the first time in their lives) and to take a critical look at its functioning. Observing hearings is also a valuable educational experience. Participants gain basic practical knowledge of the Polish legal and court system, which at some point in their lives is likely to be useful. Those involved in monitoring will be more conscious of their rights in front of the court, and more prepared to make use of the law for their own benefit.

The decision to use lay observers proved beneficial in two ways. First, in this kind of survey, lay observers possess a number of advantages. First and foremost, they are “cognitively naive”. The court is usually a totally new place for them, so they notice things that escape the attention of those who know these institutions inside out. They are not “burdened” with knowledge of a cultural code, which is characteristic of courts and the legal system in general. A lawyer will easily understand legal jargon and court procedure, while this may prove completely incomprehensible to the average citizen whom the court should serve.

Second, research involving volunteers can be carried out on a large scale at a relatively low cost. It is very important to us, and presumably to most other watchdog organizations, given the conditions under which we operate. The loss of national elites during WWII and half a century of communism has wrought havoc in the culture of social involvement, and in particular of philanthropy. Funding NGOs that work for the common good thanks to

private donations is extremely rare in Poland. Other funding is usually short-term, and quite competitive. Therefore Polish NGOs need to be very effective; this is one of our important goals. The success of our Citizen Court Monitoring, results primarily from the active involvement of numerous volunteers and crowdsourcing practices.

## RECRUITING VOLUNTEERS

Volunteers are recruited from among all adults,<sup>6</sup> although in practice, for many reasons, the great majority are students. Cooperation is voluntary (taking part in a training session does not oblige a volunteer to carry out observations; an observer can withdraw at any moment) and flexible (observers choose the time and place to carry out observations themselves). In the beginning, the Foundation did not require volunteers to sign a contract, but more recently we have been encouraging them to sign. Still, signing one is not a precondition for participation. However, to become an observer it is necessary to take part in a training session, to accept the code of observation and to sign on to our IT system. Sometimes, especially in the case of elderly people, who might not be proficient using the Internet, we drop this last requirement.

We recruit volunteers at open meetings, designed as interactive lectures. These lectures are organized all over the country, usually at universities, in public libraries, high schools, and often in partnership with local activist groups. However, we offer to train wherever a person or an institution could help us organize and promote an event. We ask them to secure the venue and declare that they are able to bring at least 12 people to a meeting. Those people and organizations also help us promote these meetings, as well as stay in touch with the volunteers. They put up posters, update the media, and spread information to local social media users.

## TRAINING VOLUNTEERS

The training sessions serve two purposes:

1. they introduce the Foundation and its mission and method to the participants, and encourage them to get involved;
2. they prepare participants to carry out observations in courts and to cooperate with the Foundation.

Thus, the training usually consists of two parts. First, we explain the idea of citizen watchdog activity in general, and in the area of justice in particular. Then, we offer a preliminary diagnosis of some of the issues connected with the way in which courts in Poland operate. To do this, we draw from government

---

6. In Poland, in order to be able to participate in a hearing as a member of the public one needs to be at least 18.

green papers, press coverage, public opinion polls, as well as those opinions from within the judicial community that indicate some of these issues. In this way we try to motivate the participants to get involved. Only after this part is completed, are the participants asked to sign an attendance list, where they can indicate whether they wish to take part in the program.

During the second part of the training participants acquire basic information on the Polish court system, including rules for conduct in the courtroom and citizen rights (depending on the level of knowledge of the participants). This is expected to make them more confident without losing the “ignorance” characteristic for those who have never dealt with courts before. The last part of the training is a discussion of research tools (i.e. both questionnaires), and using our online data submission system. An emphasis is put on questions that might be misinterpreted or misunderstood, as well as on encouraging prospective observers to take notes that expand on certain issues. The reverse (blank) page of each of the two forms is reserved for those notes. Observers are urged to describe any problematic situations or behaviors, e.g. to accurately quote the judge if he or she was rude towards anybody in the courtroom.

It would be hard to imagine a training session without using a digital beamer hooked to a computer. We need them to project questionnaires and to show ‘live’ how to use our Internet site for online data submission. We are trying to give participants quite a lot of information, including statistics and graphs, which means a lecture accompanied by multimedia presentation is the most appropriate form for training. However, participants are encouraged to ask questions, especially during the second part; it is especially important to offer them a chance to see if they know how to answer the questionnaire questions. Copies of both forms are distributed among the participants. Sometimes, the participants also get a short information leaflet. Further educational content is available on our website.

## CROWDSOURCING

The success of the Citizen Court Monitoring program depends on the active involvement of numerous volunteers willing to cooperate with the Foundation. Each of them will typically contribute ca. 70-80 hours over one year, including the training, time spent in court and entering data. The choice of time and place for the observations is up to the volunteers themselves. They also decide which hearings they would like to visit. However, we encourage them to visit more than just one court and to attend various types of cases (criminal, civil, administrative etc.). Aside from a few initial observations, we also ask them to avoid attending hearings in groups. This is because we want to get feedback from as many courts and hearings as possible, but also because attending hearings in large groups may be problematic for the courts themselves. We also feel that facing the court alone is a more powerful experience, and it better mirrors the experience of average court users.

As far as training is concerned, the Foundation does its best to reach the greatest possible number of people all over the country. There are, however, some logistical problems that we need to overcome. Initially – using a model we know from American court watch organizations – we asked our observers to return to us the questionnaires on paper recording their observations. This put an extra burden on the volunteers as they had to visit the Foundation’s office in person or send us the form by mail. Then, members of staff (or local volunteers) had to enter the observations onto a database. As the number of observers grew, this method of data collection became increasingly tedious. The number of questionnaires quickly became a problem, on top of which there were additional problems with illegible handwriting. In response to this, the Foundation has come up with the idea of using Internet-based services offering to publish surveys online. Unfortunately, none of the available tools offered all the functionalities we needed. Using them also involved some difficulty in foreseeing the future costs of services, as well as the fact that the data set would be in the possession of an external organisation, upon which the Foundation would become dependent in one way or another. We thus decided to create our own system of online data collection by means of ready-made components available under open license or with a one-off license charge.

Transition to an online data collection system made it possible for the Foundation to develop the Citizen Courts Monitoring program with very modest financial and human resources. At present, data is aggregated – and even partly analyzed – by volunteers. Just one or two people on the staff are able to train, coordinate, and supervise hundreds of volunteers who get to choose the courts and cases, carry out observations and enter them onto the database. Thanks to all this, court monitoring can be carried out nationwide and still be coordinated by one small organization.

Over time, the Foundation has developed IT tools for crowdsourcing, i.e. the implementation of large-scale projects with relatively small individual contributions from many unrelated people. Any difficulties the Foundation has encountered over these past three years were addressed in such a way that the volunteers themselves could relieve the staff from unnecessary work, while contributing relatively little time and effort.

## COMMUNICATION WITH VOLUNTEERS

Designing and implementing our own system of data collection proved a qualitative change for the Foundation. Currently, however, it is only one of several modules of the Foundation’s larger IT system. We have been developing it to meet emerging needs and solve emerging problems and our volunteers deal with it at every stage of their cooperation with us. In order for this contact to be more individualized every volunteer needs to register with the system. Then, it becomes possible to track their activity and have individualized contact (usually by phone or email). Volunteer registration was initially done

manually, based on attendance lists at the training sessions during which those interested signed with both forename and surname (also their email address and telephone number), and gave consent to have their data collected<sup>7</sup>. This data was then entered into the system by the staff, and individual accounts were created for every observer. As the number of training sessions and their participants grew quickly, this method became increasingly time-consuming, and its shortcomings were more and more apparent. The main problem was reading hand-written email addresses. Consequently, we have developed another IT module to allow online registration for all the training sessions. The Foundation currently uses a second generation training registration system. It allows us not only to make sure we have the correct email addresses of all participants, but also helps better plan and manage training sessions. First, people who are interested in attending training must sign up. Thus, we can avoid situations where more people attend than the room can fit. Knowing how big the group is going to be, we are able to prepare training handouts for them. Second, when registering for the training, participants provide their personal details themselves. For each training session we print out attendance lists, so that the participants no longer have to provide their contact details. In bigger groups this could sometimes last longer than the training itself. Instead, they just find their name on the list and sign, indicating whether or not they wish to participate in the program. Third, for those people who while registering already express their wish to collaborate with the Foundation, the system automatically generates volunteer agreements. These agreements are subsequently printed out and the participant can sign it during the training.<sup>8</sup> In this way, an enormous saving of time, postage, and effort is achieved.

Despite extensive use of IT tools to contact the volunteers, Court Watch Poland Foundation appreciates the role of personal contact. Not only does the training prepare prospective observers to carry out their observations, but primarily it creates an opportunity for personal contact between volunteers and our staff. In our view, such contact is essential and despite the technical possibility of recruiting and training volunteers online, the Foundation insists on face to face encounters, and continues to organize training sessions regardless of the logistical problems and financial cost involved. The staff contact the volunteers personally (usually by phone or email) whenever any doubts or questions appear. We have also organized several workshops for the most active volunteers and tried to engage them in more analytical tasks. A coordinator is responsible for helping the volunteers and for keeping in touch with them.

---

7. Under Polish law it is forbidden to collect and use the personal data of a person who does not agree to it in writing.

8. The Foundation does not require observers to sign any agreement, but Polish law provides certain advantages to those volunteers who sign a written agreement.





# RESULTS OF HEARING OBSERVATIONS

## DATA SET

During the third cycle of Citizen Court Monitoring the data was collected from 450 volunteers. Between 16 July 2012, and 15 July 2013 we received a record 6,938 hearing and 501 court infrastructure observations. The observations came from courts of all levels, including 3 Appellate Courts and 30 District Courts, 4 Voivodship Administrative Courts, the Supreme Administrative Court, and the Supreme Court. In total, 131 courts in Poland have been included in this edition of the program.

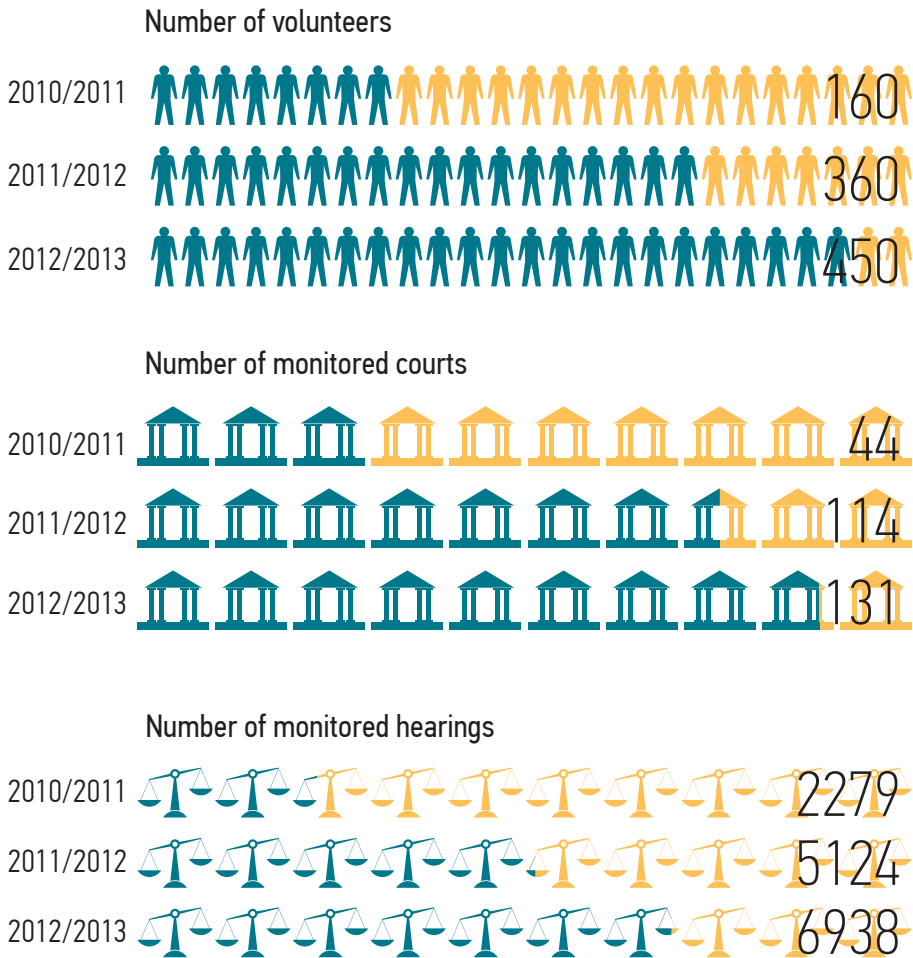
Over the past three years we have seen a steady increase in the extent of our program. During the first cycle we received 2,279 hearing observations from 44 Regional Courts<sup>9</sup> and 150 volunteers. In the second cycle, we received 5,126 hearing observations from 113 Regional and District Courts and 381 volunteers.

Each year, the list of courts where our volunteers monitor hearings differs slightly; we keep adding new courts, but in some we are not able to place volunteers. The number of volunteers differs depending on the intensity of training in a given place. We still need to expand into smaller towns with no universities. So far, most of our volunteers have been students, who had an additional incentive to take part in our project as they were usually to get some credit from their university for observing hearings (e.g. as part of their professional preparation). We try to encourage volunteers to carry out observations in smaller towns and in their local courts. Moreover, we have been trying to reach out to the elderly, who – like the students – do not work

9. Initially, the Foundation was focusing on monitoring only Regional courts, i.e. those courts, which the citizens most often go to, especially for the first time, and which decide the vast majority of all cases in Poland.

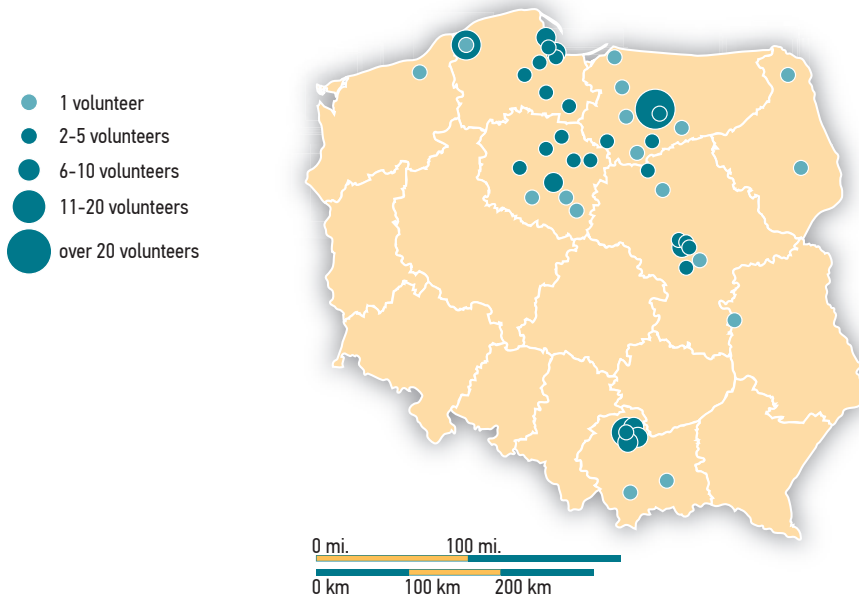
full-time and have time to sit in the courtroom during working hours (8:00 am – 4:00 pm). It is, however, more difficult to get such people involved than young people. One of the reasons is the fact that many elderly people (especially women) help their children and have little time to spare. Second, they still remember communism and tend to treat the courts with even greater distance and/or fear. In some cases we have encountered a strong conviction that courtrooms are generally closed to people unrelated to the case. Certainly, it is a challenge for Citizen Court Monitoring to recruit volunteers in all places where courts operate. There are, however, 200 such places and this task is not going to be easy with limited resources.

**Diagram 1: Expansion of Citizen Court Monitoring, 2010-2013**

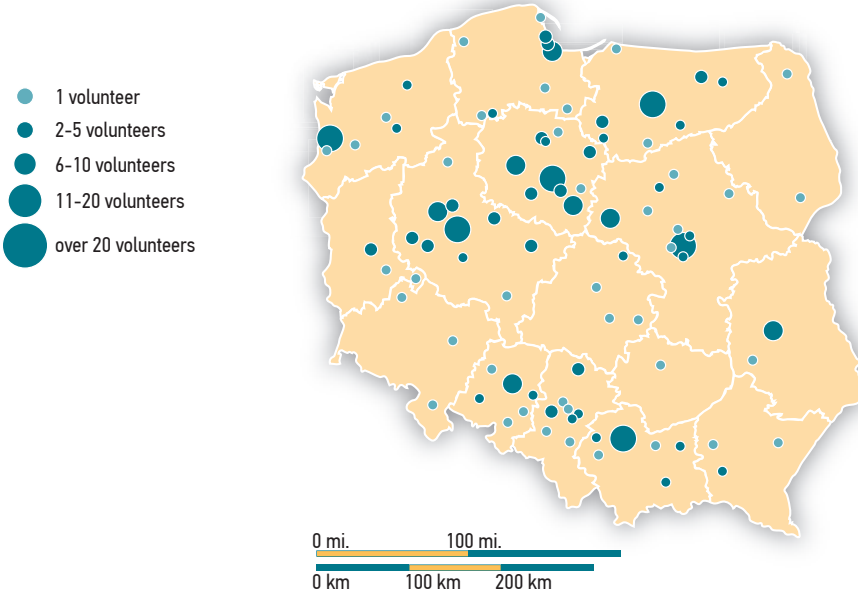


The data gathered during the third cycle of monitoring allows us to see if any changes have occurred in recent years. This report for the first time systematically compares the latest results with those from previous years. A number of changes can already be seen at the level of ‘general indicators’, calculated as a mean value for those courts for which data was collected from at least three observers. We describe these changes below when discussing our findings. We focus especially on these courts from which both in the current and previous cycles we had a relatively large number of observations. We identified 17 such courts where we had at least 10 hearings observed each year by at least three different observers. These were the minimum numbers, while in practice they were usually significantly larger.

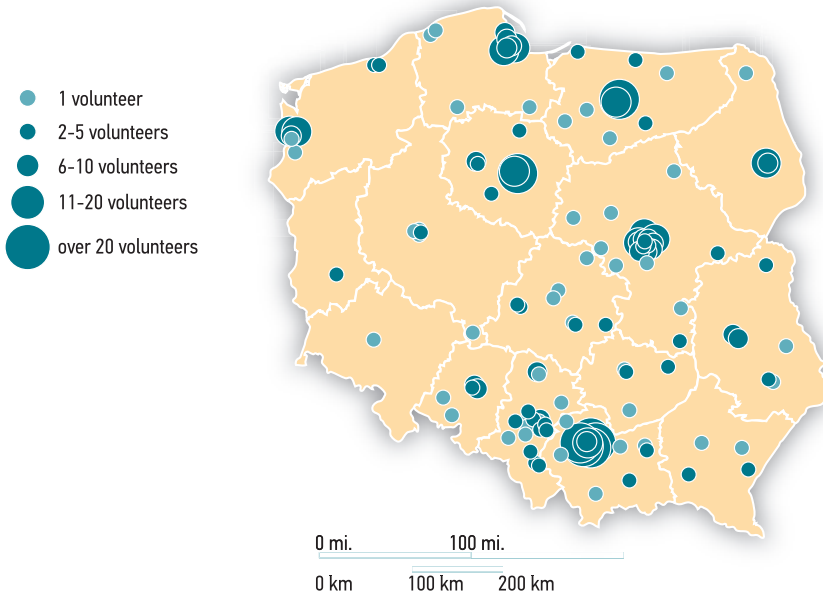
**Map 1: Geographic extent of the project, 2010-2011 (based on number of volunteers)**



**Map 2: Geographic extent of the project, 2011-2012 (based on number of volunteers)**



**Map 3: Geographic extent of the project, 2012-2013 (based on number of volunteers)**

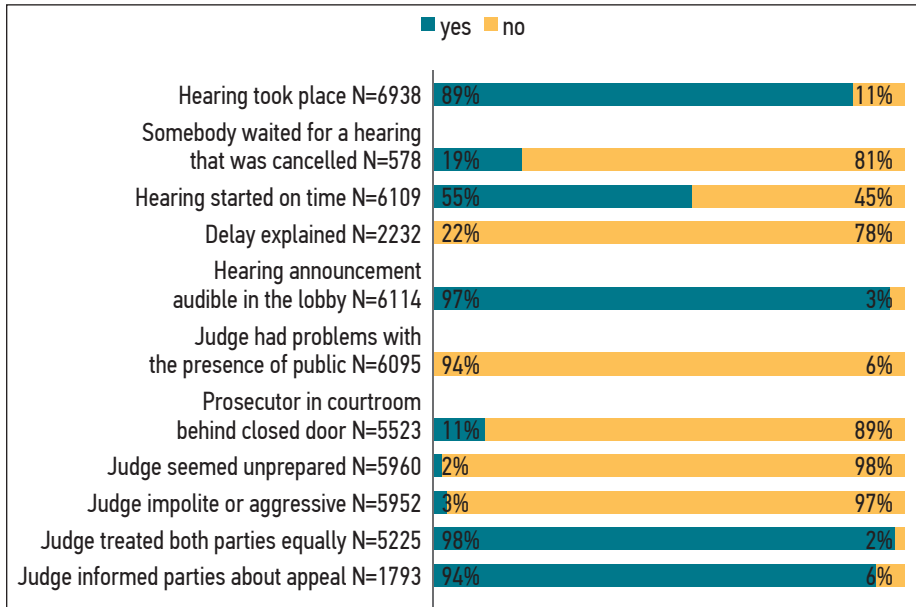


## DATA PRESENTATION

The monitoring results for particular courts are presented below only for those where at least 20 hearings were observed (in previous cycles: 15 hearings observed). There are 44 such courts, out of which 2 are Appellate, 11 – District, 28 – Regional, and 3 Administrative Courts (2 voivodship and the Supreme Administrative Court).

Similar to previous years, graphs present the proportion of answers “Yes” and “No”, ignoring “I don’t know/does not apply”. Next to the name of the court we indicate the number of observations used to calculate percentages showing the proportions of valid answers. The mean value for Poland has been calculated based on all observations. This means findings from one court where we had a disproportionately large number of observations could have a significant influence upon the whole picture. However, the alternative - i.e. averaging the index for each of the 44 courts, would have given too much weight to those courts where only relatively little observations were carried out, as opposed to those courts with large numbers of hearings observed. Our analysis of hearing observations is typically divided into four subject areas: *Transparency*, *Respecting the rights of the parties*, *Work organization*, and *Treatment of participants*. Last year’s report included a short discussion on each of these issues at the beginning of each chapter. For greater clarity in this report, and to avoid repetition, we have limited these introductions to a necessary minimum. Thus, we suggest that first time readers consult our second report (published in 2012).

**Chart 1: Average proportion of Yes and No answers to selected questions concerning hearings (based on the total number of observations in 2012-2013)**



## TRANSPARENCY

The openness of court proceedings is one of the fundamental guarantees of the rule of law. It also makes social control over the independent judiciary possible. Exceptions to the rule of court openness, i.e. circumstances in which the courtroom can be closed to the public, can occur due to “morality, state security, public order or for the protection of the private life of the parties or other important private interest” (art. 45, sec. 2 of the Polish Constitution). These are, however, exceptions to the norm, which is court transparency. This is why, under the Polish Constitution, even when the hearing itself is closed to the public, the sentence should always be announced in public.

Questions included in both questionnaires allow us to evaluate actual respect for the rule of transparency in court. We focus primarily on the access of the public to the courtroom. In our opinion, excluding the public not only limits transparency, but also – when not justified – makes citizens feel unwelcome in court. Asking members of the public to produce their ID’s creates such an artificial barrier (what if someone forgets to take their ID with them? Can they not enter the court?). Other similar practices that we have noticed include: detailed questioning of the public on the purpose of their presence in the courtroom; the checking of their identity by the judge; putting their personal data on record; prohibiting them from taking notes; or – last but not least – directing inappropriate comments to the public.

Transparency can also be restricted when the judge gains access to information on the case outside the courtroom. The missing party or parties, e.g. the accused, do not have any opportunity to respond to information acquired in this way. This situation can occur when the judge allows other participants, e.g. the prosecutor or the attorney of one of the parties, to enter the courtroom before anyone else, or stay in the courtroom between sessions or during the breaks. Regardless of whether information on the case is actually exchanged behind the closed door or not, each such situation *de facto* limits court openness. This is especially troubling in a country such as Poland, where trust in the judiciary is relatively low. Parties waiting for their case see for example a prosecutor enter the courtroom and stay there with a judge for a few minutes, while they are left outside with their suspicions. Thus, we urge our observers to pay special attention to such situations and, as will be discussed later, we advocate an 'open door' policy to counter the negative social perceptions of such situations. They may, however, be strictly related to the Polish legal and court system; in other countries court transparency may face other threats.

### OBJECTIONS TO THE PRESENCE OF THE PUBLIC

During training sessions we asked the observers to broadly understand "objections to the presence of the public". To us, they were all types of behavior that could create a barrier to the presence of the public, like judges asking detailed questions that go beyond the purpose of making sure that a given person will not be testifying in the case; asking them to *provide explanations* (why are they participating in the hearing? in what capacity? who sent them? etc.). All of these create an impression that judges have the right to know and that they have complete discretion to grant permission to stay in the courtroom or to deny it.

Unfortunately, in most of the courts in which the observations took place, there were still situations in which the observers were considered unacceptable. They were most often reported from the following courts: the Regional Court (RC) in Tarnów, courts in Gdańsk, Gdynia, and Sopot, RC's in Białystok, in Bielsko-Biała, and in Mysłowice. Some of these courts had been under intensive scrutiny from our volunteers in the previous year, so the effects of monitoring were not always immediately apparent.

The objections were diverse. Sometimes they were indeed justified by the delicate case matter, and the observers were politely asked to leave the courtroom:

---

*The case was closed to the public, we were politely asked to leave.*

---

RC Poznań Old Town, 13th Criminal Div., 9 May 2012



---

*The Judge asked the public to leave the courtroom. For the sake of the victims, he closed the courtroom to the public.*

---

District Court in Olsztyn, 7th Criminal Div., 8 Feb 2013

---

*The case was closed to the public, so I was kindly asked to leave. The judge informed me that I could not participate in the hearing since the case was closed to the public.*

---

DC Białystok, 3rd Criminal Div., 11 Apr 2013

On other occasions the way the public was asked to leave left a lot to be desired:

---

*The judge had objections to my presence. The judge asked me indignantly: What are you doing here? I said that I represent the public, unrelated to the case. The judge replied in a raised voice: this is a divorce case, the public have no presence here! Please, leave the room. It was unkind. The judge was unkind.*

---

DC Białystok, 1st Civil Div., 6 March 2013

Some judges seem to assume that anyone wishing to watch hearings knows the regulations that make clear which hearings the public can and which they cannot attend. We think that asking the public to leave the room, whenever the session is closed, should always be accompanied by an explanation of the reasons for such a decision in order not to strengthen the false belief that courts in principle operate in secret. It often happens that judges sitting in family courts wrongly assume all hearings in this division are secret:

---

*When the observers were seated in the area reserved for the public, the judge asked us who we were, and when we answered "we were the public" she concluded that the public should not be present in family cases – good bye", without even leaving us the chance to enquire whether the case was open or closed to the public, we were just told to leave.*

---

RC Olsztyn, 3rd Family and Minors Div., 22 May 2013

### Good practices

When preparing reports, both at state and local court level, we try – besides discussing cases of negative behavior – to highlight good practices, too.

Usually, our observers report that the judge had no problem with the presence of the public. Observers often inform us that they received a warm welcome from some of the judges, or that, indeed, the judge not only did not have any objections to their presence, but also invited them to his or her next hearing. Here are some examples:

---

*The judge helped us find an interesting hearing and explained to us the rules and reasons for the particular procedure of the case.*

---

RC Gdańsk-Północ, 1st Civil Div., 18 March 2013

---

*He asked for an ID, and asked in what capacity we were attending the hearing; was very kind and courteous.*

---

RC Kraków-Podgórze, 1st Civil Div., 23 Nov 2012

## CLOSING THE COURTROOM TO THE PUBLIC

In Polish courts, information whether a particular hearing is open to the public or not is usually not easily available. Therefore, it often happens that our observers try to attend cases which are closed to the public, and the judges are obliged to ask them to leave the courtroom.

In these cases, a lot depends on how the public is informed about the closure. Many observers report that it can be done in a way that builds trust and public confidence for the court, e.g.:

---

*It was a case concerning a delicate matter, i.e. rape. What is more, during this case the person being questioned was the victim. Having checked my ID, the judge asked the victim whether my presence would intimidate her or not. When the victim said that it would be an additional stress for her, the judge announced the session closed to the public, and then kindly asked me to leave the room.*

---

RC Gdynia, 9th Criminal Div., 10 July 2013

On another occasion there is a dominating impression that closing the courtroom to the public was meant to make public scrutiny of the trial and the judge's performance impossible:

---

*When the judge noticed that we took notes he closed the courtroom to the public.*

---

Olsztyn District Court, 7th Criminal Div., 22 March 2013

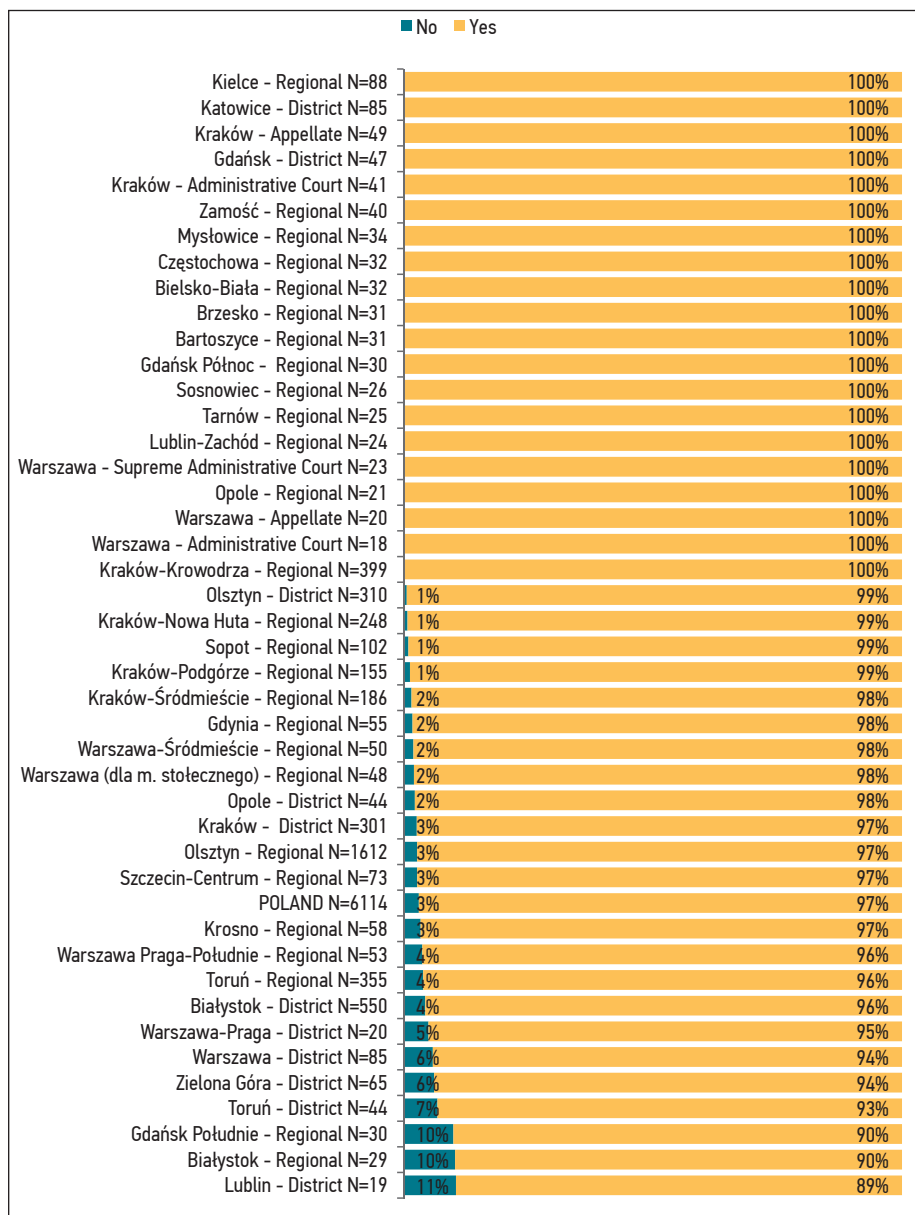
---

*The judge asked who we were and took down my forename and surname. When I asked if it was necessary she replied that perhaps I could be a witness to the case and summoned. When asked whether the case was open she did not provide any response. She asked the representatives of the parties to the case whether they formally requested the courtroom to be closed to the public. The prosecutor said that the public did not bother him. However, one could notice that they had established a privately understood means of communication: eye*

*contact. Then the judge stated, in a rather unclear way, that the case had been closed to the public and asked the public to leave the courtroom.*

RC Braniewo, 2nd Criminal Div., 5 March 2013

**Chart 2: Was the case announcement audible in the lobby?**



### Public access to the courtroom

Access to information on the place and time of court sessions is a precondition for court transparency. In general, this should be guaranteed by a public display of case schedules (lists of sessions taking place on a given day) and public announcements of the beginning of hearings. This is the reason why we asked volunteers whether the court session they had randomly chosen was announced loudly and clearly in the lobby. If it is done in a way that makes it impossible or difficult to hear for those waiting to enter the courtroom, it may prevent them from exercising the right to attend a public hearing. Here is an example:

---

*Instead of properly announcing the beginning of the session [...] the court reporter only read out the name of the defendant and then she addressed him saying "Welcome". It produced an impression that no one else was warmly welcome in the courtroom, or that the hearing was not open to the public, which in fact was not the case.*

---

District Court Olsztyn, 2nd Criminal Div., 3 Aug 2012

There were situations when the court reporter who announced the case, deliberately did not let the observers in unless they provided a reason for wanting to enter the courtroom:

---

*I was not admitted to the courtroom by the court reporter unless I gave a reason.*

---

Częstochowa District Court, 3rd Criminal Div., 11 Feb 2013

---

*We were not even admitted to the courtroom. I asked the court reporter whether the public were to be admitted to the court room. She approached the judge to enquire and returned with a negative answer. We were not informed why, but it seemed that the judge simply did not wish to have any outsiders in the courtroom.*

---

Olsztyn District Court, 7th Criminal Div., 10 April 2013

---

*When I wanted to enter the courtroom, the Court Reporter began to interrogate me about who I was. When she learned that I represented the Foundation, she said she did not want me to go inside.*

---

Kraków-Nowa Huta District Court, 1st Civil Div., 9 Aug 2012

Sometimes the announcement is indeed only seemingly directed at everybody, but in reality the court is not prepared for a situation in which someone else than the parties involved responds to it:

---

*The hearing was announced, after I entered the room it turned out I had entered a judge's chambers in which there was a hearing and I was asked by the judge to step outside because there was "no room for me".*

---

District Court in Olsztyn, 7th Criminal Div. 20 Feb 2013

---

Sometimes the fact that the venue would turn out to be too small to house the hearing can be easily foreseen, yet judges still do not try to move the hearing to a bigger room:

---

*The room in which the hearing took place was definitely too small (one bench for the public that was meant at best for three people). There were several witnesses summoned (they barely fitted into the room, most of them were standing). I was not allowed in because of limited space.*

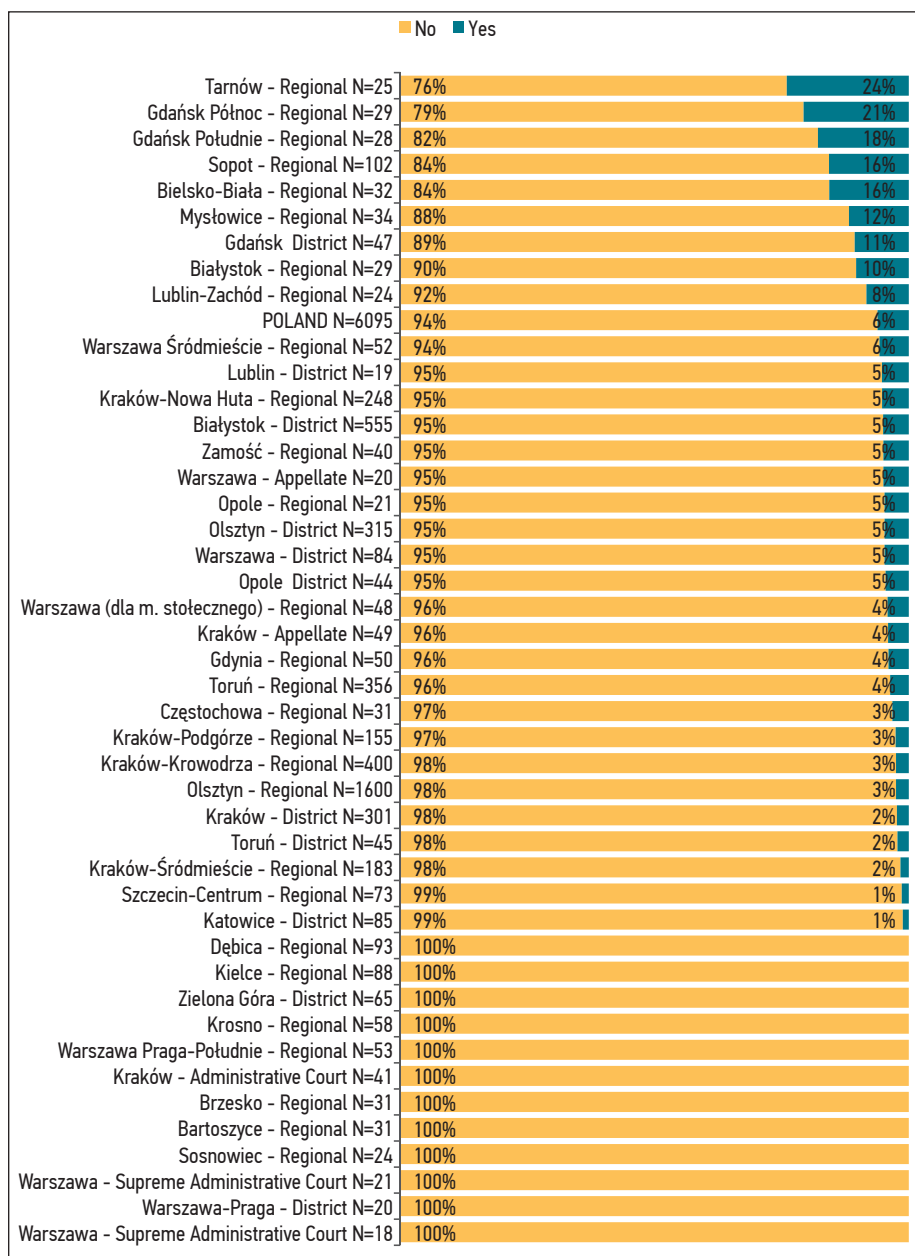
---

District Court Kraków-Śródmieście, 1st Civil Div., 28 Jun 2012

---

Unfortunately, situations when the observer had some objections as to the way in which cases were being announced were reported from many courts. However, it is much better than last year when similar cases were found in a majority of courts, and were more numerous.

**Chart 3: Did the judge have any objections to the presence of the public (or the public taking notes)?**



### **Criticizing the observers and the Foundation in the courtroom**

Last year a few of our observers experienced criticism from judges who questioned them on their cooperation with the Foundation. Sometimes the remarks went beyond the limits of acceptable behavior and could be humiliating for the volunteers. In this year's monitoring the observers did not report any similar, extreme cases. On some occasions the volunteers heard remarks that were aimed at the Foundation and despite the obvious confusion it caused, the judges' demeanor was less rude:

---

*The judge addressed us (the observers) in a strange way: "You can take notes and mark on your questionnaire that the next hearing is going to be delayed because you, young people, do not understand that the work of a judge is hard and there can be delays, but when you train to be lawyers, you will understand it."*

---

RC Olsztyn, 1st Civil Div., 22 May 2013

### **Restricting public access to public hearings**

As in previous years, it sometimes happened that the judges denied our volunteers access to hearings which were open to the public. Sometimes, observers were asked to leave the courtroom without any explanation:

---

*The judge asked me and another observer who we were. We replied that we represented the public unrelated to the case. The judge asked us to leave the room, **without providing any explanation.***

---

DC Białystok, 1st Civil Div., 23 April 2013

---

*The judge asked me who I was. I answered: "a member of the public, unrelated to the case". The judge asked whether I was related to the parties. I said no. The judge asked why I wanted to participate in the hearing. I replied: "I am on a student internship". The judge said: "Please, wait outside in the lobby".*

---

RC Olsztyn, 6th Family Div., 10 Apr 2013

We tried to verify whether the court sessions, to which our volunteers were not allowed, were indeed closed to the public. In several cases, we found out they were not officially closed (e.g. no such information was put in the minutes, which should have been the case). Usually, the hearing was indeed closed, but the judges failed to say this explicitly, and instead simply told the public to leave. Again, we find this deeply disturbing, since it creates an impression that the public are *generally* unwelcome in the courtroom.

### Requiring members of the public to obtain permission to stay in the courtroom

Unfortunately, there were still cases when judges demanded members of the public to obtain some kind of permission from the head of the court (or court division), proof that they were indeed students or collaborators with the Foundation. Luckily, such cases are very rare. Usually, judges instructed observers that they should have asked in advance whether they could participate in hearings:

---

*[The Judge] said that before the hearing we should have asked for permission to sit in the courtroom as members of the public, **because entering the court without permission is not “elegant”** and she took down our names in the minutes.*

---

RC Kraków-Krowodrza, 1st Civil Div., 26 Oct 2012

---

*At the end of the hearing – [the judge] decided that she would have to know in advance about any such visit.*

---

Gdańsk-South, 12th Civil Div., 18 Apr 2013

Occasionally, our observers report cases of judges showing distrust towards the public and asking the observers numerous detailed questions:

---

*The judge accused me of illegally trying to enter the courtroom, even though the hearing in question was not closed to the public. The judge concluded that he did not know any foundation such as Court Watch, and that the observer should have possessed an ID badge.*

---

Gdańsk-South, 4th Family Div., 18 Apr 2013

### OBJECTIONS TO TAKING NOTES

Another form of limiting the right to an open trial is to forbid the public to take notes. We ask our volunteers to complete a simple questionnaire while in the courtroom (attached to this report) which concerns only procedural matters, not the merits of the case. Such a prohibition could have been justified in regard to preliminary proceedings, where sanctions on the disclosure of information on an ongoing investigation apply. Observers avoided such hearings or were asked to leave the courtroom. We have found that the judges' attitude towards taking notes depends on the person of the judge, and not on the kind of the case at hand. Here is an example of such a situation:

---

*The judge asked me who I was, why I was taking notes and whether I knew I should have asked for permission. I said I was a student of law and I was*



*taking notes for research purposes, after which I heard that I should have said that beforehand.*

DC Warsaw, 12th Criminal Div., 7 Feb 2013

---

Taking notes by observers sometimes provoked very strong emotional reactions in the judges:

*When I heard from the defense lawyer that the case was not closed to the public, I entered the room. [The Judge] scrutinized me for three minutes. Because I had said I came as "a member of the public", I had to stand for a while before he let me sit down. After around 5 minutes I took out my notebook to take a note. I suddenly heard "wait a minute!". [...] The judge was addressing me impudently and with a definitely raised tone of voice. The judge shouted "what are you doing, please leave the room". I was shocked, it was the first time I had been treated like that, as if I had committed a crime.*

DC Lublin, 4th Criminal Div., 12 Sept 2013

---

## RESPECTING THE RIGHT TO A FAIR TRIAL

In our view, formal guarantees of the right to a fair trial are not enough. A fair trial has its formal (objective) and practical (subjective) dimension. A trial *can* still be unfair even though all formal (legal) safeguards are in place. Formal institutions – even when created in good faith and in accordance with standards – do not always yield the results intended by their creators. Informal institutions or practices can render formal institutions void. As sociologists, we recognize the impact of both formal and informal institutions. The method adopted in Citizen Court Monitoring can provide relatively systematic information to what extent some of the rights participants enjoy before the court are indeed respected. Lay observers have the advantage of being able to reconstruct the subjective opinion of average court users. This information, in turn, is a valuable source of recommendations and practical solutions designed to improve citizen satisfaction and trust in the system of justice.

### TRANSPARENCY: PRIVILEGED ACCESS TO THE COURTROOM FOR PROSECUTORS AND LEGAL REPRESENTATIVES

Another focus for our observers is transparency. We have been paying special attention to judges allowing prosecutors and attorneys to enter the courtroom before a hearing starts, and/or to stay inside during the break or after it has finished, while the rest of the public had to wait for the case to be announced, or for the end of the break, with the door closed. In Polish courts, prosecutors (and legal representatives) do not have separate rooms where they can prepare for the hearing or leave their belongings. Many judges, as a courtesy, will allow prosecutors to use the courtroom for preparation, or during the break. This is

especially the case when the same prosecutor stays with the same judge, in the same courtroom, for several hearings on the same day. This problem primarily concerns criminal courts, where prosecutors in principle are allowed to stay in the courtroom between consecutive hearings. To those awaiting the beginning of their hearing in the lobby, the sight of a prosecutor getting privileged access to the judge may seem particularly worrying. They may fear the prosecutor is able to communicate with the judge on the case, with the defendant unable to address those arguments. Even if a conversation between judge and prosecutor never takes place, the door is closed, so the parties do not know. Suspicion may arise that the prosecutor has better access to the judge, which threatens to further undermine the already low trust in the impartiality of Polish courts.

During the first year of monitoring observers found that prosecutors or legal representatives entered the courtroom before the hearing was announced or stayed in it during the break in every fifth criminal hearing. Instances of these situations were reported from 75% of these courts from which we had at least 15 observations. During the second year (June 2011– June 2012), judges in criminal courts allowed the presence of prosecutors in their courtroom before or after hearings in 18% of those observed where we had made at least 15 observations. However, the practice seemed even more widespread, with instances of such behavior reported from 86% of all courts under study. Over the past year, they have been reported less frequently – in 12% of hearings observed in criminal courts. Such situations, however, still took place in 3/4 of those courts from which we had fewer than 15 hearing observations. It indicates that judges in those courts which are monitored with greatest intensity are increasingly less tolerant of this practice, recognizing its negative impact on public perceptions of courtroom transparency.

**Table 1: Was a prosecutor or legal representative of any of the parties present in the courtroom before the announcement of the hearing, during the break, or after it had finished (only criminal courts)?**

<b>Court</b>	<b>% answering yes in 2011– 2</b>	<b>% answering yes in 2012– 3</b>	<b>Change</b>
Opole – Regional	0%	0%	+0pp
Szczecin Prawobrzeże and Zachód – Regional	20%	0%	-20pp
Warsaw – Appellate	80%	0%	-80pp
Olsztyn – District	25%	5%	-20pp
Olsztyn – Regional	36%	7%	-28pp
Toruń – District	18%	8%	-10pp
Olsztyn – Regional	23%	10%	-13pp
Kraków Krowdrza – Regional	11%	10%	-1pp
Warsaw – District	16%	11%	-5pp
Opole – District	4%	12%	+8pp
Szczecin Centrum – Regional	13%	13%	-1pp
Opole – District	15%	14%	-1pp
Kraków Nowa Huta – Regional	37%	14%	-22pp
Kraków Podgórze – Regional	17%	17%	+1pp
Kraków Podgórze – Regional	22%	19%	-4pp
Olsztyn – Regional	5%	19%	+14pp
Warsaw – District	43%	23%	-21pp

Positive changes are observed primarily in those courts which are being monitored most regularly and most intensively, i.e. in Toruń and Olsztyn, and to a smaller degree in Kraków and Warsaw. It is best to look at any changes in regard to particular judges. Among those 37 judges throughout the country whose hearings our observers visited at least 10 times in each year, one can observe mostly positive changes, e.g. increased punctuality. 15 of them never allowed the attorney or the prosecutor stay in the courtroom while the door was closed to the parties. Out of the remaining 22, 18 allowed this less frequently than in the previous year.

## ADVANTAGES AND DISADVANTAGES OF THE METHOD

In most cases, citizen observers were unable to evaluate judges on the merits of their decisions; nor do we ask them to do so. However, their observations are a valuable source of information on how average court users perceive the judge and the court in terms of impartiality, transparency and procedural

justice. Since volunteers choose their cases at random, they do not possess any previous knowledge, thus they do not have any clear opinion on a case; they do not know the parties either. Thus, they can objectively assess whether the judge's demeanor could be interpreted as a sign of bias.

Apart from an opinion on whether the judge offered equal conditions for both parties, we also asked the observers to pay attention to "whether the prosecutor or attorney of any party was present in the courtroom before the hearing began, after it had finished or during a break?" We assumed that an affirmative answer to such a question could, at best, indicate a situation undermining trust in the impartiality of the court in the eyes of court users. When the judge talks to an attorney of just one party (or to the prosecutor) while the other party (or their legal representative) is absent and the door to the courtroom remains closed, it effectively means granting one party privileged access to the judge. Even though we realize these conversations often might sometimes benefit the party involved or, indeed be completely unrelated to the case (e.g. when the judge and the prosecutor are good friends) one cannot ignore their potential influence on the judge's opinion in the case, and consequently on the sentence. Even if no conversation takes place whatsoever, the fact that the door remains closed, may create at least an impression that the prosecution or one of the parties has better access to the court and might enjoy some privileges. It should be stressed that such behavior might violate the rules of conduct laid out in the judicial codes of ethics. The Polish Code of Judicial Conduct emphasizes that judges should avoid provoking mistrust in their impartiality:

---

*The judge should avoid behavior which could undermine trust in their independence and impartiality. ("Rules of Judicial Ethics", National Council of the Judiciary, section 10).*

---

*The judge cannot create even the slightest impression that their relationship with any of the participants in the proceedings can have any impact on their impartiality. ("Rules of Judicial Conduct" by the Association of Judges of the Republic of Poland "Iustitia" (chapter 2, section 6).*

---

## WORK ORGANIZATION

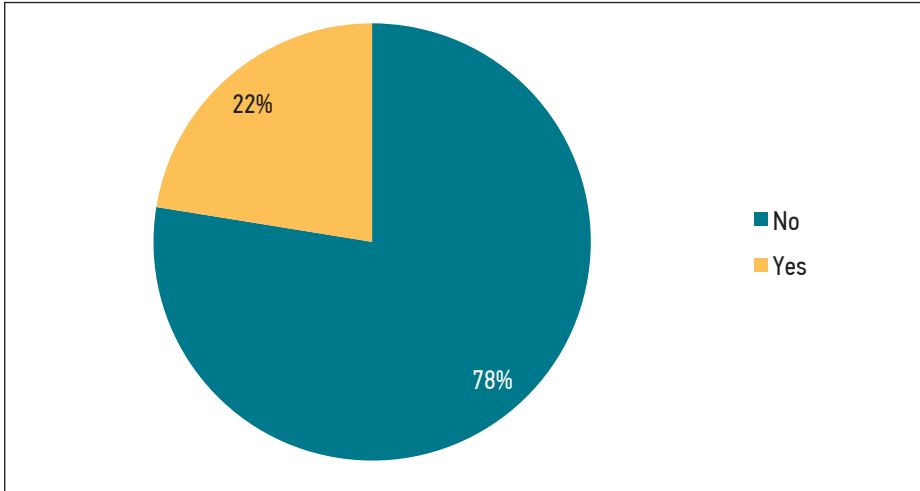
We ask our observers to pay attention to organizational aspects of the work of courts and judges. The part of the observation form which deals with these issues was slightly expanded in 2011. Our finding that half of the hearings observed were delayed made headlines and was widely discussed. It was argued that delays result from judges trying to plan the case schedule effectively, so whenever a hearing takes longer than expected, others will be delayed. We wanted to put this hypothesis to a test. Our volunteers were further asked to state if the hearing they observed was the first.

## PUNCTUALITY AND REASONS FOR DELAY

Similar to previous years, our findings confirm that lack of punctuality is an important and common problem in Polish courts. In the previous cycle, out of all hearings visited by volunteers between July 2011 and July 2012, only 46% started on time. The majority were delayed, were cancelled, or they were not cancelled but the observers were not sure whether they had actually taken place. Last year, however, we recorded a significant improvement: 55% of the hearings started on time. The rest were cancelled or started late.

The most recent data does not support the common belief that most delays result from the fact that the previous session took longer than expected. Those hearings which were the first on a given day, started with a delay even more frequently than those that started later during the day.

From the perspective of an outside observer, delays appear to result from the fact that the judge was late for the session. This is the case both when the participant can see that the judge indeed arrives late, as well as when the delay is announced and those waiting do not know what the reason for delay is. Last year we asked the observers to differentiate between situations when the judge's late arrival was obvious from ones when the reason for the delayed call was not clear. The results confirm the earlier findings. Only in 7% of delays did the observers say the reason was the delayed arrival of the parties and/or their representatives. In 31% of hearings starting late the delay resulted from the previous hearing taking longer than planned. The reason for most delays was either unknown to the observers (42%), or they unambiguously ascribed it to the judges (20.4%). It should be emphasized that many delays are indeed hard to avoid when court schedules are to be planned effectively. What is often more troubling is insufficient information about reasons and length of the delay. The parties are kept waiting, and when the hearing finally begins, they receive no apology or explanation for the delay. Therefore, they tend to blame the judge – who often is not responsible for the delay whatsoever. The Foundation has been recommending that judges briefly explain reasons for more significant delays. During the last cycle we noticed some improvement in this regard: in 2011–2 judges offered such an explanation or apology in 16% of hearings that started late, while in 2012–3 they did so in almost every fourth case.

**Chart 4: If the hearing started late, did the judge explain/apologize? (N=2232)**

This overall, statistical improvement is primarily due to significant changes in practices observed in those courts in which regular observations have been carried out for at least two years. In the Regional Court in Olsztyn, where over 3,000 hearings have been observed so far, the frequency of judges explaining reasons for delays, or offering an apology, increased twofold over the past year. Apologies or explanations are currently being provided in every third case starting late. An equally spectacular increase was recorded, for example, in several courts in Kraków where – like in Olsztyn – a particularly high number of volunteers visit the courtroom. The situation got worse only in those courts where observations were regular but less intense. An exception are the courts in Toruń, monitored with great intensity each year, and which last year scored better in this respect.

**Table 2: If hearing started late, did the judge explain/apologize? (comparison)**

<b>The Court</b>	<b>% - answering yes in 2011–2</b>	<b>% answering yes in 2012–3</b>	<b>Change (in percentage points)</b>
Szczecin - District	<b>22%</b>	<b>43%</b>	<b>+21pp</b>
Opole – District	<b>27%</b>	<b>41%</b>	<b>+14pp</b>
Olsztyn – Regional	<b>15%</b>	<b>32%</b>	<b>+17pp</b>
Olsztyn – District	<b>4%</b>	<b>31%</b>	<b>+26pp</b>
Warsaw – District	<b>24%</b>	<b>30%</b>	<b>+7pp</b>
Warsaw – Appellate	<b>10%</b>	<b>27%</b>	<b>+17pp</b>
Kraków Krowdrza – Regional	<b>13%</b>	<b>25%</b>	<b>+12pp</b>
Warsaw – District	<b>13%</b>	<b>25%</b>	<b>+13pp</b>
Olsztyn – Regional	<b>26%</b>	<b>21%</b>	<b>-6pp</b>
Kraków Podgórze – Regional	<b>10%</b>	<b>20%</b>	<b>+10pp</b>
Kraków Podgórze – Regional	<b>7%</b>	<b>17%</b>	<b>+9pp</b>
Szczecin Centrum – Regional	<b>35%</b>	<b>15%</b>	<b>-20pp</b>
Olsztyn – Regional	<b>69%</b>	<b>15%</b>	<b>-54pp</b>
Kraków Nowa Huta – Regional	<b>6%</b>	<b>13%</b>	<b>+8pp</b>
Olsztyn – District	<b>25%</b>	<b>6%</b>	<b>-18pp</b>
Olsztyn – Regional	<b>17%</b>	<b>0%</b>	<b>-17pp</b>
Szczecin Prawobrzeże and Zachód – Regional	<b>33%</b>	<b>0%</b>	<b>-33pp</b>

Punctuality differs greatly depending on the court; we have noticed significant differences even between different divisions of the same court. This may indirectly indicate that good or bad organization of work depends on the organizational culture of a given court, and not just on those factors that are independent of the court (e.g. existing procedures, caseloads, etc.). In general, delays are a major problem in courts in bigger cities (Warsaw, Kraków, and Gdańsk).

It is optimistic to see that there are fewer delays in those courts which we have been monitoring for a longer period of time. In the case of 13 such courts we have observed a decrease in the percentage of hearings starting late, while only in four such courts were delays more frequent. We are particularly happy to see the ever decreasing percentage of hearings delayed in Olsztyn and Toruń, where each year the largest number of observations has been carried out.

## TREATMENT OF HEARING PARTICIPANTS

Most volunteers who take part in our monitoring program evaluate the judges highly. Even when they come across a judge's inappropriate demeanor, the opportunity to watch many other judges at work means they do not generalize these relatively rare negative experiences. In general, the opportunity to take a close look at the way a court of law works results in greater trust for this institution. Unfortunately, not every court user has such an opportunity. If they are unlucky enough to come across somebody who routinely disrespects hearing participants, they form an opinion on the system of justice based on their experience of that person. This is characteristic of the formation of the public perception of all elite professional groups. We expect them not only to be knowledgeable, but also to display a sense of mission. Appropriate conduct is as important as professional expertise in building trust. Indeed, social research shows that procedural justice (e.g. approaching both parties with respect, and offering them the opportunity to present their case) has a greater impact on citizen satisfaction with the court than the actual case outcome (i.e. winning or losing the case).

We remind our volunteers that the judicial profession is a difficult and stressful one. Judges deal with complex cases and criminals on a daily basis. We instruct our observers not to confuse judges' resolution with aggressive behavior. Judges must be able to maintain order in their courtroom. However, they should also be able to control their emotions and body language. Cases of misbehavior, bad treatment of the parties, or uncontrolled emotional outbursts should not be ignored in the courtroom.

Last year we noticed a decrease in the frequency of ill-mannered and aggressive judicial behavior towards participants. It could be seen in those courts where observations had been carried out for two years, and the court management received detailed monitoring results. Unfortunately, the latest findings do not confirm the hypothesis that the regular presence of observers decreases the chances of the bad treatment of participants by judges. The frequency of such observations varied in the courts monitored; unfortunately, in most cases – the change was for the worse.

### CASES OF JUDGES' RUDE BEHAVIOR TOWARDS PARTICIPANTS

A judge's authority allows him or her not only to delegate tasks to the participants of a hearing, but also to comment on their behavior both in the courtroom and outside it. The role of a judge, after all, is to judge and evaluate the behavior of other people. The way in which it is done should be within the limits set by the rules of court proceedings. It cannot reveal any bias towards any of the parties or witnesses. The thin line between what can and what cannot be said and done by a judge in a courtroom, was drawn in a slightly different way by each of the observers. They are, however, representatives of Polish society and they



share the definition of a judge with most fellow members of that society. Not everyone has to agree with the critical assessment of certain behavior. There will be people who would not accept situations to which others turn a blind eye or describe them only as evoking doubts. Luckily, we ask our observers to provide more detailed accounts of what happened whenever there is something that bothers them (e.g. they deem a judge's demeanor as aggressive or rude). In this way, we can decide ourselves whether the circumstances described by our volunteers were indeed inappropriate in the courtroom, and if – in the long run – they undermine the authority of the courts in our society and should be eliminated.

Shouting at witnesses or at other participants in the proceedings is an example of behavior that is very often perceived as unjustified aggression or ill-mannered treatment. Observers had to decide whether “the judge [did] address anyone in the courtroom in a rude or aggressive way”. When answering in the affirmative, observers usually added that the judge shouted or unnecessarily raised his or her voice.

In other cases, being rude involved making emotional comments on participants:

---

*When the defendant (who, as you could tell, appeared nervous) replied, the judge said: “Since you have had some education, you should be able to answer in full sentences”.*

---

DC Białystok, 1st Civil Div., 8 March 2013

---

*The judge made several personal, rude remarks to the witness while interrogating him. **She did it in a very emotional way.** The situation during the hearing is well summarized by the following words of the judge to the witness: “**To me, this is sick.** I’m saying this as a private person”.*

---

RC Olsztyn, 1st Civil Div., 24 Sept 2012

---

*The judge raised his voice at the parties and the witnesses. He also chastened them: [...] “Do not behave like children in front of a candy shop, stomping your feet”.*

---

RC, Warsaw-Śródmieście, 1st Civil Div., 14 Apr 2013

The observers also pointed to the fact that they felt some judges humiliated participants:

---

*When the defendant said she had been undergoing psychiatric treatment for several years, the judge said "You have been medically treated for 5 years, so everything you say will have to be divided by three anyway."*

---

RC Kraków-Podgórze, 2nd Criminal Div., 29 Nov 2012

---

*When the defendant answered a question on understanding the accusation by saying he did not understand and tried to explain why, the judge asked in a harsh and unpleasant voice "Can you speak Polish?" In this situation it sounded aggressive and obnoxious.*

---

RC Wadowice, 2nd Criminal Div., 8 Jul 2013

## REACTIONS TO THE PRESENCE OF THE PUBLIC

Most of the judges our observers had a chance to meet in courtrooms did not find the presence of the public troublesome. Indeed, observers would often report that the judge was kind to them in one way or another e.g. by explaining what was going on in the court etc. This is a very positive custom that helps build greater understanding among outsiders of court proceedings which translates into enhanced trust for the courts in general.

The observers could also tell the difference between those judges who inquired about reasons for visiting a court out of sheer curiosity, from those who expressed their dislike or suspicion towards the public.

Here are some positive examples:

---

*Overall, the judge and the prosecutor were kind. When we entered the courtroom, we were instantly asked whether we were there as members of the public. Then, we were asked to introduce ourselves, i.e. provide forenames and surnames, say what we did for a living and whether we were related to or familiar with the parties. When the session was over the judge asked us to stay. She explained that this was a sitting in chambers, not a hearing, and the next case would also be uninteresting. Together with the public prosecutor they began wondering which cases would be more interesting so we could watch them. She asked the court reporter to check some data on the computer and they found a case about an armed robbery. The judge asked the court reporter to take us to that hearing (which had started several minutes earlier), and to tell the judge who ran the case that we were sent by her. Indeed, we were successfully introduced in the middle of another hearing.*

---

RC Warsaw-Mokotów, 3rd Criminal Div., 20 Feb 2013

And two negative examples:

---

*She instructed one of the members of the public that in the event of disruption of the hearing, she would close the courtroom. Then, again, she remarked that the public are not to comment on the course of the hearing. **She seemed unhappy with the fact that there were so many people present in the room, and that the media were present, too.***

---

DC Warsaw, 12th Criminal Div., 19 June 2013

---

*He [the judge] addressed me in a rude manner, requesting me to approach the bench and commenting on everything that I did. He also acted in an ill-mannered way towards the legal trainee who was substituting the attorney of the party.*

---

District Warsaw, 14th Work and Social Security Div., 31 Jul 2012

### EXAMPLES OF BEHAVIOR FAVORING COURT AUTHORITY

Being treated well by the judge, or better than expected, has an equally strong influence on an evaluation of a court experience as some unpleasant event. Again, the way hearing participants are treated by the judge matters a lot, even more than the decision itself. Our observers noticed a whole range of such behaviors which surprised them positively.

The observers often noticed that the judge tried to explain legal issues in a way that was adjusted to the participants' level of education.

---

*Yet another time the judge displayed great engagement in the case she presided over, and provided additional clues concerning possible actions the party could take; besides, she wrote the date of the next hearing on a piece of paper and handed it to the party (none of the judges had done it before, it had always been up to the court recorder), and she also calmed down the party who was stressed by the hearing!*

---

RC Toruń, 11th Civil Div., 17 Jun 2013

Other judges got credit for being sensitive to the needs of people with poor health or disabilities:

---

*The judge granted special treatment to the petitioner who is over 70 and her hearing is impaired. The judge asked for a chair and interviewed the petitioner from a close distance.*

---

RC Dębica, 1st Civil Div., 21 Aug 2012

# MONITORING COURT INFRASTRUCTURE

Apart from monitoring hearings, our volunteers pay attention to court infrastructure: access to the court building, court security, availability of information, condition of the public toilets, etc. We think all of the above influence citizens' experience of the courts. Even when the hearing itself is fair, insufficient infrastructure may make getting to the courtroom virtually impossible, or very difficult and unpleasant.

The chart below, presenting a general picture of the infrastructure of court buildings in Poland, was based on data collected between 15 July 2012 and 15 July 2013. Overall, during the third cycle of the project our observers submitted 498 infrastructure observations from 123 court buildings. Mean values for 'Poland' on the graph are shown based on a slightly narrower set of 420 observations. They concern only those 63 courts from which we received observations from at least two different observers. By limiting ourselves to a smaller set in further analyses we wanted to avoid drawing conclusions based on observations from only one person.

## GENERAL PICTURE OF COURT INFRASTRUCTURE IN POLAND

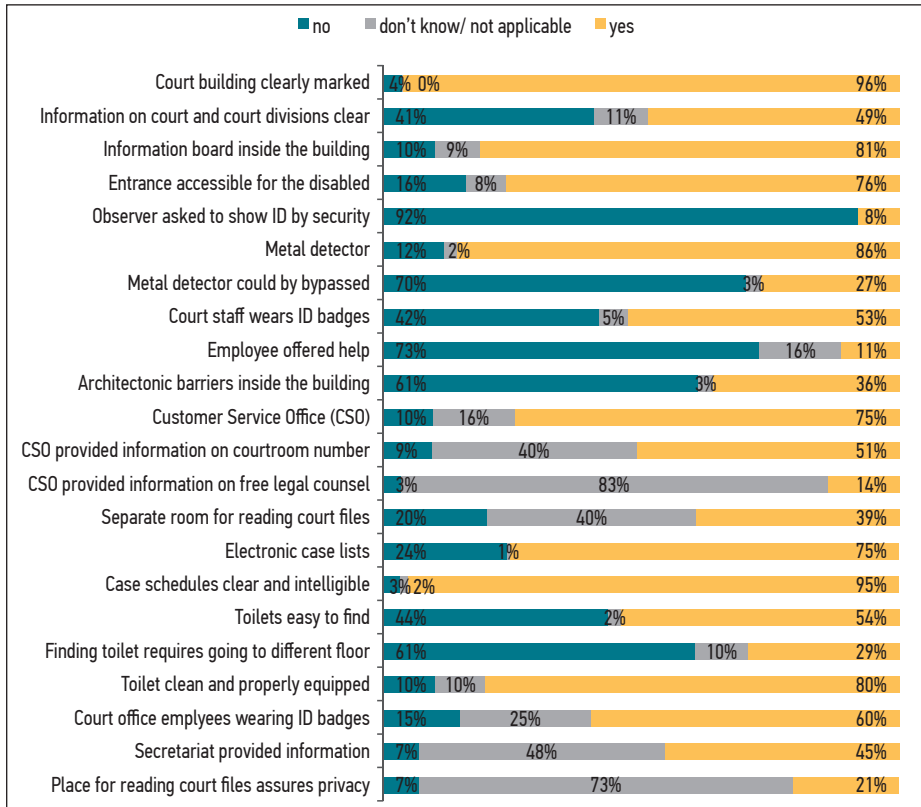
The chart below synthetically shows the image of court infrastructure, including issues considered important by our observers. As you can see, the opinions of observers were usually divided – for instance, for some of them finding the entrance for the disabled or a toilet was not a problem; for others – it was. Even though both during the training sessions, as well as on the observation sheet, we made sure that we had clearly specified what was being observed, and how one could arrive at a particular assessment, assessing accessibility and the condition of particular aspects of court building infrastructure remained somewhat subjective. Ordinary citizens, too, will differ in their opinions. One needs to be careful when interpreting the answer “I don’t know/does not apply”, since it can indicate both difficulty in assessing a given problem (as in the question on the cleanliness of toilets), as well as the fact that some observers did not bother to obtain answers to questions requiring more commitment (e.g. those concerning the functioning of the Customer Service Office or secretariat). Another possibility is that during the monitoring cycle some changes in court infrastructure were introduced (e.g. a CSO was opened).

Some questions in the last cycle of observations do not refer to the whole court building – as was the case in previous years – but to a particular court division. We have noticed that some organizational issues are better handled by some divisions than others. When within one court there are noticeable differences between divisions (e.g. in terms of office service) it is clear that a lot depends on the “human factor”.

Nils Christie, a renowned criminologist and pioneer of restorative justice, wrote about the social alienation of courts in Norway in the 1970s. In his opinion, the architecture and location of the court buildings in his country were an important element of their alienation: “They are situated in the administrative centers of town, away from the neighbourhoods of ordinary people. In the centers they are usually centralized in one or two big, very complicated buildings. The lawyers often complain that they need months to learn how to move around in those buildings. It doesn’t take a genius to imagine the predicament of the parties or the public, trapped in these structures like in a cage”<sup>10</sup>. We are not saying that this description, along with problems of access to public toilets, the limiting of access to open court sessions by court security, office workers or judges, access to public information, etc., is a representative picture of the Polish judiciary today. We are trying to show the extent of the problems discussed, and also suggest how to alleviate shortages of infrastructure that are objective and hard to fix over a short period of time. As always, the most difficult challenge is to refashion not only the buildings, but primarily the social practices and mentality of all parties involved: the court staff, the parties and the citizens, so as to bring them nearer to the ideals of a civil society.

10. N. Christie, *Conflict as Property*, “British Journal of Criminology” 1977, no 17, p. 3.

**Chart 5: Proportions of Yes, No and Don't know answers to particular questionnaire questions concerning court infrastructure in the entire survey sample (N=420)**





# ANNEX



# HEARING OBSERVATION FORM



**Court  
Watch  
Poland  
Foundation**

Court proceedings observation sheet

Observer: ..... / date: .....

City: ..... Court: .....

Court Division:  
.....

Case number:  
.....

Name of judge presiding over the session:  
.....

Room no: ..... Issue involved (law/statute):.....

Lp	Question	<i>* put down any comments on the back of the sheet</i>	Yes	No	N/K
1.	<b>Did the session which appeared on the schedule take place?</b> <i>*If not, describe what was the reason and how it was communicated</i>				
2.	<b>The planned beginning of the session: : Actual time: :</b> <i>If the session started late, what was the reason for the delay? Who was late?</i>	*			
3.	<b>If the session started late, did anybody explain or apologize?</b> <i>Who did it? What did they say?</i>			*	
4.	<b>Could the announcement of the session be heard in the hall?</b>				
5.	<b>Was the session closed to the public?</b> <i>If yes, describe who asked for it. Was it closed ex officio? By the judge's own decision? How was the public informed about the closure? Did the judge give legal grounds and reasons for closing the session?</i>				
6.	<b>Did the judge have a problem with you being present at the trial and/or taking notes during the session? *If yes, please describe.</b>	*			
7.	<b>Did the judge know you were an observer for Court Watch Poland Foundation?</b>				
8.	<b>Did the parties (or the defendant) have professional legal representative(s) or defence(s)?</b>				
9.	<b>Were there relatives of the parties or defendant(s) present (as non-witnesses)? Who were they?</b>				
10.	<b>Was the prosecutor or attorney of any of the parties present in the courtroom before, after, or during the break of the session?</b> <i>*If yes, describe in detail (who was it, were they in the courtroom with the judge or any of the parties, was the door closed, for how long?)</i>	*			
11.	<b>Did the judge listen to both parties and ask each of them or the accused if they had any questions or something to ask?</b> <i>*If not, who did (s)he omit?</i>			*	
12.	<b>Did the judge seem unprepared for the session, e.g. seemed not to know the papers, made factual errors, asked only general questions? *If yes, describe what made you think so, how did the judge proceed?</b>	*			
13.	<b>Did the judge address someone in a rude or aggressive manner? *If yes, please describe.</b>	*			
14.	<b>Did the judge offer an equal opportunity to both parties to present their case and treat them in the same way? *If not, please describe.</b>			*	
15.	<b>While dictating the court report the judge:</b> <input type="checkbox"/> faithfully reflected the proceeding, <input type="checkbox"/> omitted only irrelevant information, <input type="checkbox"/> omitted relevant information, <input type="checkbox"/> only corrected the court clerk who was taking notes, <input type="checkbox"/> did not dictate, <input type="checkbox"/> the session was electronically recorded.				
16.	<b>If the session ended in pronouncing a sentence, did the judge inform the parties in a clear manner how and when to appeal?</b> <i>*If not, please describe.</i>			*	
17.	<b>If the session ended in pronouncing a sentence, did the judge give reasons for his/her decision?</b> <i>*If not, please describe if he/she did not do it at all, or were the reasons unclear/too brief?</i>			*	

# INFRASTRUCTURE OBSERVATION FORM



**Court  
Watch  
Poland  
Foundation**

Court infrastructure observation sheet

Observer: ..... / date: .....

City: ..... Court: .....

Court address: .....

Lp	Question	Yes	No	N/K
1.	Was the court building clearly marked with an official plate?		*	
2.	Did the plate contain information on what kind of court and court divisions are housed in the building?		*	
3.	Was the notice board inside clear and did it contain information about where to find the Chief Justice and all court divisions? (also those in other buildings?) <i>*What was missing?</i>		*	
4.	Was the entrance to the building accessible to the disabled (or was there a separate entrance for them)?		*	
5.	Upon entrance, was the observer's identity checked by security? <i>*Note what the security did (searched bags, asked to present an ID or summons, put down personal details)?</i>	*		
6.	Was the court security equipped with metal detector?			
7.	If yes, was it possible to enter the building without passing through the metal detector, or the detector did not work, or was ignored by security?	*		
8.	Did court employees (apart from the security) wear ID badges?			
9.	Did any court employee offer assistance to the observer without being specifically asked for it?	*		
10.	Were there architectonic barriers in the building that prevented persons on a wheelchair from using it, such as steps, narrow corridors or passages?	*		
11.	Was there a Customer Service Office (CSO) or an information desk? <i>*If yes, is it easily found upon entering the court?</i>	*		
12.	Did the observer obtain information from CSO about the courtroom number in which a specific trial will take place?		*	
13.	Did the observer obtain information via telephone about the date of the next hearing in a given case?	*	*	
14.	Was there a separate room in the building for reading the court records?	*		
Questions concerning the secretariat of the specific court division and its courtrooms.				
<b>Court division:</b> .....				
15.	Was there an electronic case list in operation in the building?			
16.	Was information concerning the place and time of court sessions intelligible, clear, and up to date?		*	
17.	From the lobby, can you see where the toilets are?		*	
18.	Does finding a toilet require going to another floor? <i>How far do you need to go?</i>	*		
19.	Was the nearest toilet clean and equipped with soap and toilet paper?		*	
20.	Where court staff in the secretariat wearing ID badges?		*	
21.	In the secretariat, did the observer obtain answer to the question: <i>Can I see the case schedule for the next day?</i>		*	
22.	If there is no special room for reading court records, ask where it is possible to sit down and read them. Is the designated place isolated to ensure privacy, yet allowing supervision by court staff?		*	

*\* put down any comments on the back of the sheet. N/K = Don't know/ Does not apply*

## TABLE OF CHARTS

Diagram 1: Expansion of Citizen Court Monitoring, 2010-2013 .....26

Map 1: Geographic extent of the project, 2010-2011  
(based on number of volunteers).....27

Map 2: Geographic extent of the project, 2011-2012  
(based on number of volunteers).....28

Map 3: Geographic extent of the project, 2012-2013  
(based on number of volunteers).....28

Chart 1: Average proportion of Yes and No answers  
to selected questions concerning hearings  
(based on the total number of observations in 2012-2013).....30

Chart 2: Was the case announcement audible in the lobby? .....34

Chart 3: Did the judge have any objections to the presence  
of the public (or the public taking notes)?.....37

Table 1: Was a prosecutor or legal representative of any of the parties  
present in the courtroom before the announcement of the hearing,  
during the break, or after it had finished (only criminal courts)? .....42

Chart 4: If the hearing started late, did the judge explain/apologize? .....45

Table 2: If hearing started late, did the judge explain/apologize?  
(comparison).....46

Chart 5: Proportions of Yes, No and Don't know answers to particular  
questionnaire questions concerning court infrastructure in the entire  
survey sample.....53

**Court Watch Poland Foundation** is a non-for-profit watchdog organization created in 2010 to promote and coordinate citizen monitoring of trial courts in Poland.

[www.courtwatch.pl](http://www.courtwatch.pl)

The right to observe trials as public is the only instrument at the disposal of civil society to control the way judicial power is exercised. Engaging the citizens and NGOs becomes especially important, when, as in Poland today, many citizens distrust democratic institutions, including the courts.

So far, we have succeeded in encouraging almost 1,000 people to become volunteer-observers and visit their local court to learn first hand how justice is being administered in Poland. We can see that their presence in the courtroom is already making a difference. This brief report hopes to share some of this experience – including the methodology and basic results of court monitoring – with other NGOs, especially in new democracies.



Court  
Watch  
Poland  
Foundation



ISBN 978-83-934081-3-9



9 788393 408139 >