HELSIŃSKA FUNDACJA PRAW CZŁOWIEKA
HELSINKI FOUNDATION for HUMAN RIGHTS

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TO:

The Secretary of the Committee of Ministers

Council of Europe

Avenue de l'Europe

F-67075 Strasbourg Cedex

COMMUNICATION FROM THE HELSINSKI FOUNDATION FOR HUMAN RIGHTS

CONCERNING

EXECUTION OF ECtHR JUDGMENT IN CASE *RUTKOWSKI AND OTHERS AGAINST POLAND*
APPLICATION NO. 72287/10

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EXECUTIVE SUMMARY

- **In the judgment of 7 July 2017 in the case of *Rutkowski and Others v. Poland* (application no. 72287/10) the European Court of Human Rights ruled that Polish regulations preventing unreasonably lengthy court proceedings did not conform to European Convention on Human Rights standards;**
- **The fundamental problems identified by the ECtHR were unreasonably low compensation for unduly lengthy court proceedings adjudged by Polish courts and the application of a principle called "fragmentation" to calculate the length of proceedings;**
- **HFHR does not question execution of the judgment at the individual level, but actions of a general nature raise doubts;**
- **The amendment to the Act on a Complaint Against Length of Proceedings does not fully comport with Convention standards; while eliminating the negative phenomenon of "fragmentation" of proceedings, it fails to guarantee that compensation adjudged for unreasonably lengthy proceedings will be appropriately high;**
- **Legislative and organizational changes currently being observed in the justice system do not favor increased court proceeding efficiency while prejudicing judicial independence;**
- **Reintroduction into the Polish legal system of court assessors has not yet contributed to increased court proceeding efficiency due to material complications in the course of granting them judicial capacity. Furthermore, there are substantial reservations as to the appropriate level of assessor independence;**
- **The procedure for appointing judges in Poland may be deemed ineffective due to the president's practice of refusing to appoint candidates nominated by the National Council of the Judiciary, which practice is arbitrary and lacking external control. This practice may further negatively impact judicial independence;**
- **Public statements of National Council of the Judiciary members indicate that the Minister of Justice has not submitted notice regarding vacant judicial posts, resulting in approximately 800 vacancies. The lack of a sufficient number of judges with capacity to adjudicate cases is further exacerbated by the practice of delegating judges to work at the Ministry of Justice.**

1. Introduction

The Helsinki Foundation for Human Rights with its seat in Warsaw (hereinafter "HFHR") would like to respectfully present to the Committee of Ministers of the Council of Europe its communication, under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, regarding the execution by the Polish authorities of the European Court of Human Rights ("ECtHR") judgment in the case *Rutkowski and Others v. Poland* (application no. 72287/10).

The HFHR is a Polish non-governmental organisation established in 1989 with a principal aim to promote human rights, the rule of law and the development of open society in Poland and other countries. The HFHR actively disseminates the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "Convention") and is dedicated to contributing to the proper execution of ECtHR judgments. In its activity, the HFHR pays particular attention to the execution of ECtHR judgements and monitors the implementation of ECtHR case-law standards by national authorities. For example, in 2017 the HFHR published a report on the implementation of judgements in Polish cases.[1]

The case of *Rutkowski and Others against Poland* is of particular importance for HFHR for two reasons. First, the HFHR lawyers represented the applicant, Mr. W. Rutkowski, in the proceedings before the Court. Second, the HFHR believes that the excessive length of judicial proceedings is one of the greatest threats to the right to court in Poland. Therefore, we actively monitor the legislative works in this area and submit our legal opinions to the Parliament, in which we present, among others, the standards regarding right to a "hearing within a reasonable time" developed in the jurisprudence of the Court (see below).

In the present communication, the HFHR will focus primarily on the analysis of the steps undertaken by the Government for the execution of the judgment on the general level.

2. Case Description

On 7 July 2015, the European Court of Human Rights (ECtHR) ruled in the case of *Rutkowski and Others v. Poland* (no. 72287/10), in which it found violation by Poland of rights guaranteed in art. 6 § 1 and 13 of the European Convention of Human Rights and Fundamental Freedoms (Convention) to review of cases within a reasonable time and effective remedy. In ruling on the subject matter, ECtHR applied a pilot-judgement procedure flowing from rule 61 of the ECtHR Rules of Court. The pilot judgment procedure was applied also to 591 analogous applications submitted in the period between 4 March 2008 and 28 May 2015.

[1] The report is available at: www.hfhr.pl/wp-content/uploads/2017/03/Raport-implementacja-ETPC-10-03-2017.pdf

In the case of *Rutkowski and Others v. Poland* ECtHR reviewed three applications, that of Wiesław Rutkowski, Mariusz Orlikowski and Aleksandra Grabowska.

The subject of *Rutkowski v. Poland* were alleged excessively lengthy criminal court proceedings. The indictment was submitted for review by the court near the end of 2002, while the first substantive hearing was held in 2006. Proceedings were completed 21 July 2010. In the referenced period, the court committed numerous procedural errors which resulted in significant extension of proceedings. ECtHR found that actions taken by procedural bodies were unreasonably lengthy as compared to their complexity and therefore constituted a finding for unreasonably lengthy proceedings. Preparatory and proceedings of first instance took a total of 7 years and 10 months. W. Rutkowski filed a complaint for unreasonably lengthy court proceedings in this case, and in June 2010, the court ruled in his favor, awarding him a pecuniary judgment of PLN 2000.

The second case under review by the Court was *Orlikowski v. Poland*. In this case, the violations occurred in a civil proceeding and the subject of the dispute was payment of amounts due for renovation work performed by a tenant. The period analyzed by the Court totaled 11 years and eight months including both instances. The main reasons for the extended period of time was the time it took experts to prepare their opinions as well as the lengthy dates between hearings. However, after Mr. Orlikowski filed a complaint against the unreasonably lengthy proceeding, the court ruled against him.

The final matter reviewed *en bloc* was *Grabowska v. Poland*, which concerned an unreasonably lengthy civil proceeding, the substance of which concerned a finding of joint ownership of real property by adverse possession. In this case, the period reviewed by ECtHR totaled 13 years and 2 months. The proceedings involved two instances and the indicated reason for the delay was the way in which the proceeding was organized resulting in the parties not being properly notified of its course. The court also ruled against applicant in the complaint against unreasonably lengthy proceedings.

3. Violation of the European Convention of Human Rights

In its decision, the European Court of Human Rights decided to merge the applications and implement the pilot-judgement procedures. The Court found violations of art. 6 par. 1 Convention based on unreasonably lengthy proceedings and art. 13 Convention in connection with the defective functioning of an application against unreasonably lengthy proceedings operating pursuant to the act of 2004. The Court emphasized that the referenced violations of the Convention equally involved the unreasonable length of civil and criminal proceedings as well as the Polish courts' "non-compliance with the Court's case-law on the assessment of the reasonableness of the length of proceedings" and "the standards for «sufficient redress» to be afforded to a party by the domestic court for a breach of the right to a hearing within a reasonable time".[2]

In the referenced decision, the Court emphasized that the problem of violating those two standards had already been the subject of prior ECTHR jurisprudence. In the case of

2 *Rutkowski v. Poland*, § 212.

Kudła v. Poland[3] as well as *Krawczak v. Poland*[4] the Court enjoined Poland to resolve the problem of unreasonably lengthy proceedings. The priority in the face of continued violations of art. 6 par. 1 and art. 13 is to have the respondent state guarantee appropriate protections arising under Strasbourg standards. As indicated in the referenced decision, the biggest problem is "fragmentation" of proceedings which are under review for their unreasonable length. In His Analysis for the Helsinki Foundation for Human Rights, attorney Artur Pietryka indicates that this phenomenon involves limiting the "review of complaints against unreasonable length of proceedings solely to the current proceeding stage (e.g. proceedings solely in a given instance). ECtHR analyzed court jurisprudence in this realm and specifically indicated that it was the Supreme Court that caused this to be a regular practice in Poland."[5] It also raised the inadequate amount of compensation awarded as another significant defect.

4. Execution of the decision

In the judgment of *Rutkowski and Others v. Poland* the European Court of Human Rights held that Poland "must, through appropriate legal or other measures, secure the national courts' compliance with the relevant principles under Article 6 § 1 and Article 13 of the Convention"[6]. The Court additionally obligated Poland to pay applicants the pecuniary amounts indicated in the judgment and notified the Polish government of 591 other applications covered by the pilot judgment. Furthermore, the Court suspended the procedure in the referenced cases for a two-year term and for a one-year term from the date of announcement of the judgment in future similar cases.

4.1. **Execution of the judgment in the individual aspect**

The Court enjoined the Government of Poland to pay pecuniary compensation for nonpecuniary damages incurred and to refund costs and expenses to W. Rutkowski, M. Orlikowski and A. Grabowska. The Government of Poland executed the judgment in this realm.

Additionally, the Court notified Poland of 591 applications, suspended these proceedings for a two-year term tolling from the date the judgment in the case of *Rutkowski and Others v. Poland* become legal. The Government of Poland has hitherto submitted 400 unilateral declarations in which it admits to violations of the Convention and expressed its will to pay compensation. In 270 cases the applicants accepted the proposed compensation amount and thereby agreed to a settlement. The remaining 130 applicants either rejected the government's offer, disagreed with the offered compensation amount, or failed to respond at all. By decision dated 20 June 2017,

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3 *Kudła v. Poland*, no. 30210/96 ECHR 2000

4 *Krawczak v. Poland*, no. 40387/06 ECHR 2008

5 A. Pietryka, *Przewlekłość jako problem strukturalny w Polsce - analiza wyroku* Rutkowski i inni p. Polsce, 2015, P. 4, http://programy.hfhr.pl/monitoringprocesulegislacyjnego/files/2016/03/HFPC_analizy_I_rekomendacje_92015_ost2.pdf (accessed: 28 November 2017).

6 *Rutkowski v. Poland*, point 6 of decision

however, ECtHR struck from the list all 400 cases in which the Polish government submitted a unilateral declaration.[7]

4.2. **Execution of the judgment in the general aspect**

While the response in the individual realm conformed to the Court's expectations, the same cannot be said about the response to the overall problem.

4.2.1. Amendment of the law on the application against unreasonably lengthy proceedings

The Sejm [*Lower House*] passed the law on the complaint for violation of a party's right to review of court cases without unreasonable delay (further: law on the complaint against unreasonable delay) on 17 September 2004, as part of executing the judgment in the case of *Kudła v. Poland* from 2000.[8] Nevertheless, jurisprudential reality failed to change in this respect despite another amendment in 2009[9] and inclusion of the Polish problem of unreasonably lengthy proceedings by the Committee of Ministers under special oversight in connection with implementation of Interlaken Conference agreements.[10]

The most significant Convention violations indicated by the Court include the unauthorized "fragmentation" of proceedings as well as failure to award adequate compensation to applicants.

On 30 November 2016, the Sejm amended the Law on the System of Common Courts and Certain other Acts, which included amendments to the law on the complaint against unreasonably delay in proceedings. Amendment of two regulations, art. 2 par. 2 and art. 12 par. 4 of the act, are relevant with respect to execution of the *Rutkowski and Others v. Poland* judgment.

Amendment of the former aimed to eliminate the aforementioned harmful phenomenon of proceeding "fragmentation." To that end, the legislator decided that when evaluating whether proceedings had been unreasonably lengthy, the reviewing court should consider "the total time of the proceeding from its filing through review, irrespective of when the complaint was submitted, the nature of the case, the level of its factual or legal complexity, importance to the party filing the complaint, the issues resolved therein or behavior of the parties and, in particular, of the party claiming unreasonable length of proceedings." This solution should be evaluated positively.

Unfortunately, the same cannot be said of the amendment to the second regulation concerning the pecuniary amount due a party whose proceeding was unreasonably lengthy. The amendment provides a principle that the compensation shall constitute PLN 500 for each year of the hitherto proceeding, irrespective of how many stages of

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7 *Załuska, Rogalska and Others v. Poland*, no. 53491/10, 12452/08 and others ECHR 2017

8 *Kudła v. Poland* (*ibid.*)

9 Act dated 20 February 2009 amending the act on the length of proceedings complaint for violation of the right to a hearing without unreasonable delay, Dz.U. [*Journal of Laws*] 2009 no. 61 pos. 498.

10 Conference on the future of the European Court of Human Rights at Interlaken (18-19 February 2010), http://www.msz.gov.pl/pl/aktualnosci/wiadomosci/aktualnosc_34035?printMode=true.

proceeding the excessive length was found to concern. A higher amount may be awarded only in exceptional cases if the matter is of particular significance to the plaintiff and if the plaintiff has not contributed to the unreasonable length of proceedings. Furthermore, the legislator left in force the limitation of total pecuniary damages to a maximum of PLN 20,000. In the opinion of HFHR, these regulations will not effectively eliminate the second defect found by ECtHR in the judgment of *Rutkowski and Others v. Poland*, i.e. unreasonably low compensation. Even at the legislative stage, when the planned amendment contained a compensation amount of PLN 1000, HFHR cited the standards arising, *inter alia*, under ECtHR cases of *Scordino v. Italy (no. 1)*[11] and *Apicella v. Italy*,[12] and noted that the "proposed change in the amount of compensation adjudged, contained in the proposed amendment, only partially fulfills the ECtHR recommendation. The sum of PLN 1000 per year of hitherto length of proceedings shall not lead to proper levels of pecuniary compensation amounts being adjudged for findings of violation to a party's right to a hearing within a reasonable time. For the purpose of assuring complete compensation for the moral harm experienced due to unreasonably lengthy proceedings, this amount should be raised while the limitation on the total sum that may be paid out in pecuniary compensation specified in the act on the complaint against unreasonably lengthy proceedings should be deleted." Therefore, our evaluation of the legislation's final wording is even more negative, as it provides for payment of PLN 500, i.e. half the amount initially considered, for each year of unreasonably lengthy proceedings. Also the maximum limit of the compensation for lengthy proceedings seems inconsistent with the Convention. In this regard it is worth to take into account that in more than 100 out of 400 cases reviewed by the Court in the decisions of *Załuska, Rogalska and Others v. Poland* the amount of compensation proposed by the Government in its unilateral declaration was higher (in some cases more than twice as high) than current statutory limit of PLN 20,000.

4.2.2. Use of court assessors

In its annual legislative agenda from September 2017,[13] among actions indicated to shorten the duration of court proceedings, the Polish government included reintroduction of court assessors into the Polish legal system. In the opinion of HFHR, this change will fail to contribute to increased proceeding efficacy and may additionally lead to numerous violations of the right to a hearing within a reasonable time.

The institution of court assessors existed in Poland until 2009, when it was abolished as part of the execution of the judgment of the Constitutional Court dated 24 October 2007 (Ref. no. SK 7/06). In that judgment, the Constitutional Court ruled that granting assessors the right to adjudge court cases violates the constitutional right to a hearing because the assessors have not been provided sufficient guarantees of judicial independence. This was primarily evident in the granting to assessors judicial capacity where the National Council of the Judiciary did not participate in granting this transfer

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11 *Scordino v. Italy (no. 1)*, no. 36813/97 ECHR 2006

12 *Apicella v. Italy*, no. 64890/01 ECHR 2004

13 https://rm.coe.int/1680759769 (accessed: 28 November 2017).

of capacity, as well as in the possibility of assessors being dismissed by the Minister of Justice. Furthermore, the ECtHR decision in the case of *Henryk Urban and Ryszard Urban v. Poland*[14] finds that assessors did not meet the requirements of independence flowing from art. 6 par. 1 ECHR.

As indicated by the government in its legislative agenda, assessors were formally reintroduced into the Polish legal system by way of the Act dated 10 July 2015 amending the Law on the System of Common Courts and Certain Other Acts. However, it is important to note that pursuant to art. 25a of this act, the first assignment of an assessor position to a given district court was allowed to occur only after 30 October 2017.

Furthermore, the status of an assessor was fundamentally remodeled as of 21 June 2017 with the coming into force of the Act dated 11 May 2017 on the Amendment of the Act on the National School of Judiciary and Public Prosecution, the Law on the System of Common Courts and Certain Other Acts. Pursuant to these regulations, the Minister of Justice shall appoint the assessors. Subsequently, that minister shall be able to apply to the National Council of the Judiciary to grant a given assessor the capacity to execute judicial activities. If, within 30 days, the NCJ fails to oppose a candidacy, the assessor shall acquire the capacity to perform nearly all acts inuring to a district court judge. The exceptions shall be the assessors' incapacity to rule on application of temporary arrest (though assessors will be able to review applications to extend temporary arrest), review of appeals of refusal to initiate or to discontinue preparatory proceedings, nor shall they review cases of family and guardian law. The court assessors shall perform in the capacity of a judge for four-year terms, tolling from the date of the expiration of the month long-term for the NCJ to oppose a candidacy or, if such opposition is lodged, from the date of abolition of the act expressing opposition by the Supreme Court . The act provides that the assessor shall be independent and irremovable.

In its legal opinion on the above act, HFHR indicated that the political process of appointing assessors may negatively impact their independence as, "it gives rise to a material concern whether an assessor appointed in such conditions shall be capable of being internally independent or, whether, in the back of their mind, there will always be unease about the executive's reaction to their decisions. This is most evident in the example of assessors reviewing criminal cases. In these cases, the prosecutor is a party – and that prosecutor is subordinate directly to the General Prosecutor who is also the Minister of Justice." HFHR further noted the extremely limited ability to actually evaluate the applications of the Minister of Justice to grant assessors judicial capacity by the NCJ due to the short term allowed for review of the application and limited documentation provided to the NJC. HFHR further questioned what it considers to be the overly broad scope of capacity granted assessors.[15]

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14 *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08 ECHR 2010

15 http://www.hfhr.pl/wp-content/uploads/2017/04/Opinia_HFPC-asesorzy-2017-04-05.pdf (accessed: 28 November 2017).

In practice, the process of granting judicial capacity to the first assessors encountered numerous complications. On 13 October 2017, the Minister of Justice submitted to the National Council of the Judiciary a list of names of appointed court assessors. The NCJ deemed that such a document was insufficient and requested the minister to provide additional documentation[16]. The minister provided additional information, however, on 30 October 2017, the NCJ submitted its opposition to every single court assessor on the list submitted by the Minister of Justice. The NJC cited defective documentation as the reason for its decision, where the defects prevented it from properly evaluating whether the assessors met the statutory criteria to be granted judicial capacity[17]. Nonetheless, on 14 November 2017, the NCJ appointed special commissions that were to review the supplemented documentation *de novo*. As a result of these activities, on 17 November 2017, the NCJ repealed 252 out of 265 notifications of opposition to candidacies[18].

In light of the above apprehensions about assessor independence and material practical difficulties stemming from the procedure of granting judicial capacity to assessors (due to which no assessors have in fact began performing their duties in a common court) it is difficult to accede to the government's view that reintroduction of assessors to the Polish justice system may positively impact court proceeding efficacy.

4.2.3. President's refusal to appoint judges

In reviewing the assessors' legal status and especially the guarantees of independence they are provided, it is worthwhile to note the negative practice of the current president of refusing to appoint a judicial candidate submitted by the National Council of the Judiciary.

Pursuant to art. 179 Constitution, judges are appointed by the president of the Republic of Poland upon the application of the National Council of the Judiciary for an indefinite term. Meanwhile, art. 144 par. 3 point 17 Constitution provides that it is the prerogative of the president to appoint judges, which means that a decision by the head of state in this realm does not require the additional signature of the prime minister to be valid. However, the Constitution does not directly state whether the application of the NCJ is binding upon the president or whether the latter may, in certain circumstances, refuse to appoint a candidate, nor does it lay out whether a decision by the head of state to refuse to appoint a judiciary candidate is subject to judicial review.

Hitherto presidents of Poland had usually not refused to appoint candidates submitted by the NCJ to judicial posts. The first to deviate from this practice was Lech Kaczyński, who refused in 2008 to appoint a total of nine judges and court assessors to their posts without justifying his decision. The un-appointed candidates appealed the refusal to the administrative Court which ruled against them by arguing the president had executed

[16] http://www.krs.pl/pl/aktualnosci/d,2017,10/5041,stanowisko-prezydium-krajowej-rady-sadownictwa-z-dnia-18-pazdziernika-2017-r (accessed: 28 November 2017).
[17] http://www.krs.pl/pl/aktualnosci/d,2017,10/5058,krajowa-rada-sadownictwa-postanowila-nie-powolywac-asesorow-z-listy-przeslanej-przez-ministra-sprawiedliwosci (accessed: 28 November 2017).
[18] http://www.krs.pl/pl/aktualnosci/d,2017,11/5093,komunikat-rzecznika-prasowego-w-sprawie-listy-asesorow (accessed: 28 November 2017).

his constitutional prerogative, his office did not operate as an administrative body and is therefore not subject to judicial review. The Constitutional Court also reviewed the matter but found the complaints of the un-appointed judges unreviewable for formal reasons.

The second time a president refused to appoint candidates to their judicial posts occurred in June 2016, when President Andrzej Duda refused to appoint a total of 10 candidates nominated by the National Council of the Judiciary, where most of the cases concerned promotion to courts of higher instance. The refusal, similarly to 2008, contained no justification. The un-appointed candidates submitted complaints to the administrative court, but these petitions were denied in December 2016. There is a cassation case ongoing currently before the Supreme Administrative Court in this matter.

Granting the president the capacity to arbitrarily refuse to appoint judicial candidates proposed by the NJC, without that decision being subject to any external control, leads to material interference with judicial independence. The threat of this is particularly visible in the case of assessors, who are granted judicial capacity, but may be appointed to a judicial post by the president only after three years, as a rule. Therefore, if an assessor is aware that his or her judicial appointment depends solely on the president's arbitrary decision, which may be guided by purely political factors rather than an assessor's professionalism, may clearly influence the assessor's independence and thereby their objectivism and impartiality. A similar danger may also apply to already appointed judges, as their advancement to courts of higher instance also requires a presidential act of appointment. As a result, in politically controversial matters, i.e. those where an active politician is one of the parties, the other party may be deprived of the right to a fair hearing. It is noteworthy, that when the president refused to appoint the judges in 2016, the media speculated on his political motivations.[19]

4.2.4. Insufficient number of judges

In its legislative agenda, the Polish government devotes much attention to measures for resolving problems stemming from an insufficient number of judges. However, media reports indicate the Ministry of Justice not only fails to take effective measures intended to increase the number of judges, but instead does the very opposite and its approach exacerbates the shortage.

Statements by members of the National Council of the Judiciary deserve particular attention here. These indicate the Minister of Justice fails to announce vacant judicial positions giving rise to numerous vacancies. For example, in September 2017, Judge W. Żurek, the NCJ spokesperson, stated that "for 18 months the Minister of Justice has not announced new positions. We already have several hundred vacant positions, which are due from the [state] budget. Judges retire or pass away and there are no replacements

[19] E. Siedlecka, *Prezydent odmówił nominacji dziesięciu sędziom. Bez żadnego uzasadnienia*, "Gazeta Wyborcza" – online edition, 29 June 2016, http://wyborcza.pl/1,75398,20320081, Prezydent-sadzi-sedziow.html (accessed: 28 November 2017).

for them."[20] Further, in November 2017, he specified that there were about 800 vacant judicial posts.[21] The problems arising from the insufficient number of judges are further aggravated by the practice of delegating judges to perform administrative duties at the Ministry of Justice. According to data published by the Iustitia Polish Judges Association, as of 31 August 2017, there were 162 judges delegated to that ministry.[22] Reports by the OKO.press online portal indicate that in Warsaw alone there is a shortage of "as many as 98 judges, because 71 judicial posts remain unfulfilled, while another 27 are blocked by judges delegated to work at the Ministry of Justice."[23]

These vacant slots could be at least partially filled by assessors. However, as indicated above, there are numerous controversies concerning compliance with the Polish Constitution and ECHR respecting granting assessors judicial powers. Furthermore, due to procedural complications, the assessors still do not perform in a judicial capacity at this time.

The insufficient number of judges may contribute to unreasonably lengthy court proceedings for obvious reasons.

4.2.5. The ongoing reform of the Supreme Court and the National Judiciary Council

Currently the Parliament works on two legislative drafts proposed by the President. They concern the reform of the National Judiciary Council (primarily the procedure of election of its judicial members) and the internal organization of the Supreme Court. It is hard to speculate as to what would be the final outcome of the reform as it is still on the initial stage, nevertheless it is clear the some of the proposals would be inconsistent with the principle of judicial independence. For instance, the President proposes, and what is accepted by the Government, the election of the judicial members of the NJC by the Sejm (lower chamber of the Parliament) and not by the judges themselves, what may lead to politicization of this body. Moreover, the draft law on the Supreme Court contains provisions which would lower the retirement age of the judges of this court. As a result, many of them (according to media around 40%[24]) may be forced to retire if the President does not allow them to continue to perform judicial functions.

Therefore, the ongoing reform not only will not improve the effectiveness of proceedings, but may threat the independence of judiciary and lead to even further extension of the length of proceedings (due to personal changes in the Supreme Court).

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20 http://www.rmf24.pl/tylko-w-rmf24/popoludniowa-rozmowa/news-rzecznik-krs-polowa-przypadkow-opisanych-w-kampanii-polskiej,nId,2440457 (accessed: 28 November 2017).

21 http://www.tokfm.pl/Tokfm/7,103454,22621778,sedzia-zurek-zdradza-prawdziwe-intencje-ziobry-ws-asesorow.html (accessed: 28 November 2017).

22 http://www.iustitia.pl/informacja-publiczna/1883-ujawniamy-aktualna-liste-sedziow-referendarzy-i-asystentow-sedziego-delegowanych-do-min-sprawiedliwosci (accessed: 28 November 2017).

23 https://oko.press/krs-odrzucila-265-asesorow-minister-ziobro-mianowal-naruszeniem-prawa/ (accessed: 28 November 2017).

24 https://www.tvn24.pl/wiadomosci-z-kraju,3/polska-i-swiat-zmiana-wieku-emerytalnego-sedziow,771001.html (accessed: 28 November 2017).

5. Summary

In the evaluation of HFHR, the government's hitherto activities only partially execute on the standards flowing from the referenced ECtHR decision. The amendment of the law on the complaint against unreasonably lengthy court proceedings should certainly be evaluated positively to the extent that it leads to elimination of the phenomenon of "fragmentation" of proceedings by courts evaluating the scale of undue delay. However, the very same amendment fails to guarantee that the pecuniary amounts adjudged as compensation for unreasonable delay will be sufficient.

Reintroduction of the assessor position touted by the government has not, as of this writing, contributed to improved efficacy of court proceedings, as not a single assessor has begun evaluating cases in any common court due to procedural problems. Furthermore, there are numerous controversies as to the constitutionality, with respect to the Polish Constitution and ECHR, of granting assessors judicial powers. Therefore, there exists a risk that decisions made by assessors may be overturned in the future.

Detrimental phenomena that may contribute to increased unreasonable delay in court proceedings is the failure by the Minister of Justice to announce judicial vacancies and delegation of too many judges to work at the Ministry of Justice. It is estimated that over 800 positions remain unfilled because of these activities.

The communication was prepared by Marcin Szwed, lawyer of the Strategic Litigation Programme of the Helsinki Foundation for Human Rights, and Julia Gerlich, intern in the Strategic Litigation Programme, under the supervision of Piotr Kładoczny, the Secretary of the Board of the Helsinki Foundation for Human Rights, and Katarzyna Wiśniewska, the coordinator of the Strategic Litigation Programme.

On behalf of the Helsinki Foundation for Human Rights,

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