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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 HELSINKI FOUNDATION FOR HUMAN
RIGHTS**

CONCERNING

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

To the attention of:

1. Mr Jan Sobczak

Plenipotentiary of the Minister of Foreign Affairs for cases and procedures before the
European Court of Human Rights
Agent of Polish Government

2. Mr Adam Bodnar

Commissioner for Human Rights

EXECUTIVE SUMMARY

- On 7 July 2015, the European Court of Human Rights delivered a judgment in the case of *Rutkowski and Others v. Poland* (application no. 72287/10) and held that the then-applicable Polish regulations designed to address the excessive length of court proceedings were inconsistent with the European Convention on Human Rights.
- The European Court of Human Rights has identified two fundamental problems: the insufficient amounts of compensation for non-pecuniary damage awarded by Polish courts on account of the excessive length of proceedings and the phenomenon of “fragmentation” of proceedings which affects the assessment of their duration.
- The judgment issued in the *Rutkowski* case is of a pilot nature. Given the systemic nature of the problem of excessively lengthy court proceedings in Poland, the ECtHR has obliged Polish authorities to ensure, “through appropriate legal or other measures”, that courts apply standards under Article 6 § 1 and Article 13 of the Convention.
- Despite the passage of more than four years since the judgment was delivered, in the opinion of the Helsinki Foundation for Human Rights, the judgment has still not been executed at the general level.
- The amendment to the Law of 17 June 2004 on complaint about breach of the right to have a case examined in judicial proceedings without undue delay (“the 2004 Act”) of 30 November 2016 eliminated the problem of “fragmentation” of proceedings, but failed to ensure the sufficient amount of just satisfaction awarded to parties to excessively lengthy proceedings.
- The minimum amount of money that may be awarded as just satisfaction for each year of excessively lengthy proceedings (PLN 500, approx. EUR 115) still fails short of the standards set by the European Convention on Human Rights and the guidelines contained in the case law of the European Court of Human Rights. Moreover, the average amount of just compensation awarded by regional courts decreases on a yearly basis, whereas just compensation awarded by courts of appeal increased significantly only in respect of certain types of proceedings (mainly criminal cases), which means that the amount of compensation paid in other cases remains at the same, insufficient level or is even lower than the pre-amendment average.
- Polish law still provides for a maximum limit of just compensation payable on account of the excessive length of court proceedings, which is PLN 20,000 (approx. EUR 4,585).
- Measures taken so far by the Polish Government, such as the reintroduction of the role of court assessors (*asesor sądowy*), have failed to sufficiently expedite court proceedings. Generally speaking, the average duration of proceedings in Poland has remained unchanged, and the number of complaints against the excessive length of proceedings is increasing each year. For example, in 2018, regional courts and courts of appeal received 1700 additional complaints as compared to 2016.
- Furthermore, the reforms of the judiciary introduced in recent years have continued to seriously jeopardise the independence of courts while failing to improve the efficiency of the judicial process.
- There are currently 773 judicial vacancies in Poland. In addition there are 166 judges seconded to the Ministry of Justice, which do not adjudicate in courts. Therefore this means that there is a shortage of over 900 judges in Poland.

Introduction

1. The Helsinki Foundation for Human Rights (“the HFHR”, or “the Foundation”) respectfully presents another opinion on the execution of the judgment of the European Court of Human Rights (“the ECtHR”, “the Court”) of 7 July 2015 in the case of *Rutkowski and Others v. Poland* (application no. 72287/10).

2. The HFHR is a non-governmental organisation set up to protect human rights, also by reviewing the observance of human rights by public authorities in Poland. The Foundation carries out its statutory responsibilities by representing clients in proceedings before national courts and international human rights bodies, submitting amicus curiae briefs in judicial proceedings, preparing opinions on legislative proposals and delivering statements to state bodies. The Foundation also monitors the execution of judgments of the European Court of Human Rights in cases brought against Poland. In this respect, we have already presented the Committee of Ministers with our assessments of the execution of a number of ECtHR judgments, including the following: *P. and S. v. Poland* (judgment of 30 October 2012, application no. 57375/08), *Kędzior v. Poland* (judgment of 16 October 2012, application no. 45026/07), *Beller v. Poland* (judgment of 1 February 2005, application no. 51837/99).

3. The right to a court is a crucial area of the Foundation's work. Over the years, the HFHR has taken a number of actions to protect the independence of courts and judges, as well as to uphold standards of a fair trial and the right to have one's case considered without unnecessary delay. In this regard, the HFHR has prepared a legal opinion on a proposed amendment to the 2004 Act¹.

4. On 28 November 2017, the Foundation submitted to the Committee of Ministers of the Council of Europe its first communication concerning the execution of the judgment in the case *Rutkowski v. Poland*². The content of the 2017 communication remains relevant today. In the present communication, however, we would like to focus on addressing the arguments put forward in the Government's reply to the HFHR's communication³ and subsequent updated Action Plan⁴ in view of the most recent statistical data.

I. The judgment of the European Court of Human Rights

5. In the *Rutkowski* judgment, the European Court of Human Rights found that Poland had violated Article 6 § 1 of the Convention on account of the unreasonable length of proceedings in the applicants' cases and Article 13 of the Convention on account of the deficient operation

¹ See the HFHR opinions of 29 April 2016, <https://legislacja.rcl.gov.pl/docs//2/12284705/12349473/12349476/dokument225306.pdf> (accessed on 11-09-2019) and of 26 October 2016 http://www.hfhr.pl/wp-content/uploads/2016/10/HFPC_opinia_druk-851_27102916.pdf (accessed on: 11-09-2019).

² Communication from the Helsinki Foundation for Human Rights concerning the execution of ECtHR judgment in case *Rutkowski and Others v. Poland* of November 2017, ref. DH-DD(2017)1404, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680772dc9 (accessed on: 11-09-2019).

³ Comments of the Ministry of Foreign Affairs of the Republic of Poland presented in reply to the Communication submitted to the Council of Europe's Committee of Ministers on 28 November 2017 by the HFHR of 12 December 2017, (“Ministry's Comments of 12 December 2017”) https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680772dc9 (accessed on: 11-09-2019).

⁴ Updated Action Plan submitted by the Polish authorities on 11 October 2018 (“Updated Action Plan”), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e5560 (accessed on: 11-09-2019).

of the complaint under the 2004 Act.⁵ The Court noted that the said violations of the Convention consisted in the unreasonable length of both civil and criminal proceedings and in the Polish courts' non-compliance with the ECtHR case law setting criteria of the assessment of "the reasonableness of the length of proceedings" and "appropriate and sufficient redress" for a violation of the right to have one's case heard within a reasonable time. The Court also noted that violations of the two Convention provisions had already been addressed in ECtHR case law. In the cases of *Kudła v. Poland* (application no. 30210/96) and *Krawczak v. Poland* (application no. 40387/06) the Court imposed an obligation on Poland to resolve the issue of excessively lengthy proceedings. The priority for subsequent violations of Article 6 § 1 of the Convention and Article 13 of the Convention is for the respondent State to ensure that the national courts apply the relevant rules stemming from the Strasbourg standards. The crucial problem raised in the *Rutkowski* judgment is the "fragmentation" of proceedings subject to excessive length assessment, what, according to the Court, was incompatible with the Convention's standards. Another important issue raised in the judgment is the problem of inadequate just compensation.

II. Execution of the judgment

6. In the judgment delivered in the case *Rutkowski and Others v. Poland*, the European Court of Human Rights held that Polish authorities are obliged, "*through appropriate legal or other measures, secure the national courts' compliance with the relevant principles ... of the Convention*"⁶.

7. In view of the above, on 30 November 2016, the Sejm passed an amendment to the Courts Act and some other laws (J.L. 2016, item 2103), which also modified the 2004 Act. The modification of two provisions of the 2004 Act, Article 2(2) and Article 12(4), is relevant for the execution of the *Rutkowski* judgment.

8. The amendment of Article 2(2) aimed at eradicating the aforementioned adverse practice of the "fragmentation" of proceedings. In that regard, the legislator decided that, in assessing whether proceedings are excessively long, the court adjudicating a case should take into account "*... the total time taken to date from the initiation of proceedings until the time when the complaint was heard, irrespective of the stage at which the complaint was brought, the nature of the case, the degree of complexity in fact and in law, the relevance of the issues to be resolved for the party who made the complaint and the conduct of the parties, in particular the party who complained about the excessive length of the proceedings*". This approach should be assessed favourably.

9. However, an assessment of the other amended provision, which concerns awards of just compensation to the affected party to the proceedings, may only bring the opposite conclusion. This provision states that, as a rule, just compensation should amount to PLN 500 (approx. EUR 115) for each year of the protracted proceedings, regardless of the number of stages of the proceedings shown to have been excessively lengthy. A higher amount can only be awarded in exceptional circumstances, if a case is of particular importance to the complainant and provided that the complainant has not contributed to the excessive length of proceedings by their own action or omission. According to the HFHR, the new rules will not eliminate the second

⁵ Law of 17 June 2004 on complaint about breach of the party's right to have a case examined in pre-trial proceedings conducted or supervised by a prosecutor or in judicial proceedings without undue delay (Journal of Laws (J.L.) 2004, No. 179, item 1843, as amended).

⁶ *Rutkowski and Others v. Poland*, para. 6 of the operative part of the judgment.

shortcoming identified by the ECtHR in *Rutkowski*, namely insufficient awards of just compensation. Already at the stage of ministerial works on the discussed amendment, when proposals were made to set the per-annum amount of just compensation at the level of PLN 1,000 (approx. EUR 230), the HFHR, referring to the standards resulting, among others, from the ECtHR judgments in *Scordino v. Italy* (no. 1, application no. 36813/97) and *Apicella v. Italy* (application no. 64890/01), noted that the amount in question was too low.⁷ However, as the proposed amendment was sent to the Sejm for further consideration, the Government abandoned this idea, presenting a modified provision that stipulated a reduced amount of just compensation award (PLN 500). It is important to note at this point that, according to the explanatory memorandum attached to the proposed amendment, the introduction of the minimum amount of PLN 1,000 was necessary to adjust the level of just compensation to ECtHR standards. Also, during a joint session of the Senate Legislation Committee and the Human Rights, the Rule of Law and Petitions Committee (14 November 2016), dedicated to the proposed amendment to the 2004 Act, the problem of the proposed annual amount of PLN 500 was acknowledged. For example, it should be noted that Senator Zbigniew Cichoń proposed to reinstate the amount of PLN 1,000, arguing that “... otherwise, we will be exposed to further judgments of the Court of Human Rights in Strasbourg, which will recognise that sums awarded by Polish courts in compensation for excessively lengthy proceedings are token amounts and do not correspond to the relevant awards made by the Strasbourg Court”⁸ and that the amount of PLN 1,000 would be adequate. In addition, Renata Szczęch, Undersecretary of State in the Ministry of Foreign Affairs, stressed that “[t]he absence of an effective compensation mechanism may lead us to face the allegation of failure to comply with the judgment referred to by the Mr Chairman, and, as a consequence, to further applications being submitted against Poland to the Court.”⁹ During the session, Justyna Chrzanowska, Head of the Department for Proceedings before International Human Rights Bodies at the Ministry of Foreign Affairs, said that “[t]he judgment does not concern three individual cases. It applies to three selected cases to present a certain problem of the Polish justice system.” She also mentioned that “... the minimum [the ECtHR] expects Poland to establish in such situations would be at least PLN 1,000, if not more.”¹⁰

10. Moreover, the legislator has maintained the upper limit of the just compensation award (PLN 20,000, approx. EUR 4,585). The HFHR argued that “[i]n order to ensure full compensation for the moral harm suffered because of the excessive length of the proceedings, consideration should be given not only to increasing this amount, but also to abandoning the upper limit of admissible awards laid down in [the 2004 Act]”.¹¹ A similar opinion has been expressed by the Supreme Court, which also called for consideration of abolishing the upper limit of PLN 20,000 as “... in exceptionally protracted proceedings, the absolute limit of PLN 20,000 in just compensation as set forth in Article 12(4) of [the 2004 Act] may prove insufficient. Consequently, a national court's award of even the maximum amount of PLN 20,000 may be

⁷ HFHR opinion of 29 April 2016 on the proposed law amending the Law on complaint about breach of the party's right to have a case examined in pre-trial proceedings conducted or supervised by a prosecutor or in judicial proceedings without undue delay and to the Courts Act, http://www.hfhr.pl/wp-content/uploads/2016/10/HFPC_opinia_druk-851_27102916.pdf (“HFHR Opinion of 29 April 2016”) (accessed on 11-09-2019).

⁸ Transcript of the joint session of the Senate Legislation Committee and the Human Rights, the Rule of Law and Petitions Committee on 14 November 2016, p. 8, https://www.senat.gov.pl/download/gfx/senat/pl/senatkomisjepisiedzenia/6842/stenogram/110uw_egz_4.pdf (accessed on: 11-09-2019).

⁹ Ibid., p. 8.

¹⁰ Ibid., p. 15.

¹¹ HFHR Opinion of 29 April 2016, pp. 4-5.

insufficient for the ECtHR to recognise that the applicant has lost his status as the 'victim' within the meaning of Article 34 of the Convention."¹²

11. The Ministry's Comments of 12 December 2017¹³ repeatedly emphasise that the measures implemented in the amended 2004 Act allow for a flexible approach to each suspected case of excessively lengthy proceedings, which, in turn, enables the courts to award suitable just compensation on a case-by-case basis. The Ministry also argues that the minimum amount of just compensation will be appropriately increased in cases of particular importance for the complainant. In the *Apicella* judgment, which is repeatedly invoked in the Ministry's Comments, the ECtHR clearly indicates that "cases of particular importance" include, inter alia, proceedings related to employment law. However, the review of the statistics provided by the Ministry of Justice, described in more detail in Section IV below, allows us to observe that the average amount of just compensation awarded on account of the excessive length of employment law proceedings before regional courts has in fact decreased following the amendment to the 2004 Act, from PLN 4,409 (approx. EUR 1,010) in 2016 to PLN 2,125 (approx. EUR 487) in 2018. For cases of this type pending before courts of appeal, one can also observe a decrease in the average amount of just compensation awarded after amendment's entry into force – from PLN 2,571 (approx. EUR 589) in 2016 to PLN 2,000 (approx. EUR 459) in 2017. Although 2018 saw a significant increase in the amounts of just compensation awarded by courts of appeal in respect of excessively lengthy employment law proceedings (the average amount of relevant just compensation was PLN 4,300 or approx. EUR 960), this trend is unlikely to continue, given that in the first half of 2019 the amount in question decreased to PLN 3,000 (approx. EUR 688).

12. In view of the above, the final shape of the 2004 Act and the adopted practice of its application should be assessed negatively. This is because the 2004 Act not only reduces (by 50%, as compared to the original proposal) the minimum amount of just compensation for each year of excessively lengthy proceedings, but also, as shown by the above example (and despite the Government's assurances¹⁴), fails to ensure that higher compensation is paid even in "cases of particular importance" for claimants. Even more worryingly, amounts of just compensation paid after the Act's amendment tend to be in fact lower than those awarded before. In these circumstances, it is difficult to consider as credible the Government's assertions that the negative effects of introducing the lower minimum amount of just compensation can be offset by the admissibility of increasing the amount of compensation on a case-by-case basis. Indeed, if the minimum amount is awarded even in particularly important cases, it is difficult to expect that courts will award increased amounts of just compensation in other cases.

III. Excessive length of proceedings in Poland in the light of statistical data

Length of court proceedings

13. The full execution of the ECtHR judgment in the *Rutkowski* case requires not only an amendment to the 2004 Act and a change in the practice of its application, but also the

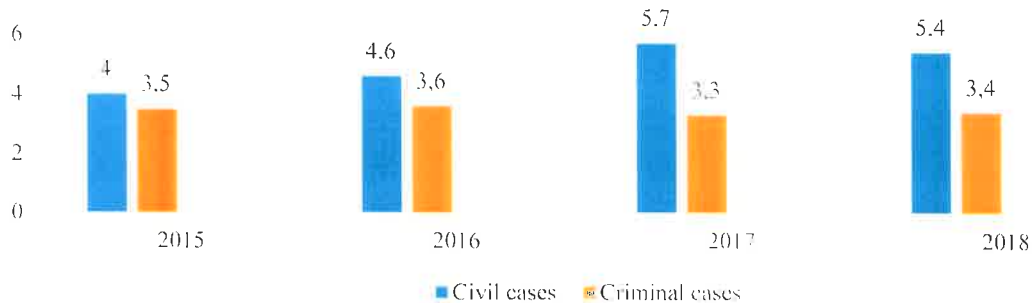
¹² Supreme Court's opinion on the proposed law amending the Law on complaint about breach of the party's right to have a case examined in pre-trial proceedings conducted or supervised by a prosecutor or in judicial proceedings without undue delay and to the Courts Act, pp. 5-6, <https://legislacja.rcl.gov.pl/docs/2/12284705/12349473/12349476/dokument219444.pdf> (accessed on 11-09-2019).

¹³ Comments of the Ministry of Foreign Affairs of 12 December 2017.

¹⁴ Ibid, pp. 2-3.

introduction of measures that will reduce the length of court proceedings. In this respect, the situation in Poland is still very far from optimal. The Helsinki Foundation for Human Rights used data provided by and obtained from the Ministry of Justice¹⁵ to develop charts on the average duration of court proceedings in civil and criminal cases before district and regional courts.

Average length of proceedings before district courts in Poland (in months)



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14. The above chart shows that the length of civil proceedings pending before district courts increases on an annual basis, while the duration of criminal cases decreases slightly. In 2015, the average duration of civil proceedings before a district court was 4 months; in 2016 – 4.6 months, and in 2017 the figure rose significantly, to 5.7 months. In 2018, the average time of proceedings in civil cases before a district court slightly decreased, to 5.4 months. The average length of criminal cases pending before a district court was 3.5 months and 3.6 months in 2015 and 2016, respectively. It subsequently decreased to 3.3 months in 2017, before rising slightly to 3.4 months in 2018.

Average length of proceedings before regional courts in Poland (in months)



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¹⁵ The HFHR obtained access to these data under an access to public information request submitted pursuant to the provisions of the Law of 6 September 2001 on Access to Public Information (consolidated text: Journal of Laws of 2018, item 1330, as amended, "the Public Information Act"). The data were communicated by the letter dated 14 November 2018, ref. BK-I-082-223/18. We also used statistical data made available at <https://isws.ms.gov.pl/pl/baza-statystyczna> (accessed on: 11-09-2019).

¹⁶ The chart was developed based on data obtained under the Public Information Act. The data were communicated by the letter dated 14 November 2018, ref. BK-I-082-223/18. We also used statistical data made available at <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,50.html> (accessed on: 11-09-2019).

¹⁷ The chart was developed based on data obtained under the Public Information Act. The data were communicated by the letter dated 14 November 2018, ref. BK-I-082-223/18. We also used statistical data made available at

15. Although, initially, the average duration of criminal proceedings heard by regional courts significantly decreased, from 10.3 months in 2015 to 8.8 months in 2016, it remained the same (7.6 months) both in 2017 and 2018. However, the average length of civil cases pending before regional courts has changed very little since 2015, from 7.7 months to 7.8 months in 2018.

16. This state of affairs also proves that the significant streamlining of court proceedings envisaged by the Polish Government, which was to take place thanks to the reintroduction into the Polish legal system of, among others, court assessors¹⁸, has not actually taken place.

Submitted complaints about the excessive length of proceedings

The number of submitted complaints about the excessive length of proceedings¹⁹		
Year	Regional courts	Courts of appeal
2015	13,169	4,936
2016	10,876	5,590
2017	11,470	5,789
2018	11,986	6,189
H1 2019	7,205	3,259

17. The insufficient progress in addressing the problem of extensive length of judicial proceedings is also reflected in statistics on the number of complaints about the excessive length of proceedings submitted in district courts and courts of appeal. A review of these statistics shows a continuous increase in the number of court proceedings in Poland in which such complaints are lodged. The Government's Updated Action Plan²⁰ correctly noticed that the number of complaints about the excessive length of proceedings submitted in regional courts decreased to 10,876 in 2016. However, subsequently it increased to 11,470 in 2017 and to 11,986 in 2018. In 2015, 4,936 complaints were lodged with courts of appeal and their number increased in each following year, reaching 6,189 in 2018.

Awards of just compensation in confirmed cases of excessively lengthy proceedings

18. As it has already been mentioned above, the amendment has not contributed to an increase in the amount of just compensation awarded by Polish courts on account of extensively lengthy proceedings. On the basis of data provided by the Ministry of Justice, the Foundation prepared

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,50.html> (accessed on: 11-09-2019).

¹⁸ Comments of the Ministry of Foreign Affairs of 12 December 2017, p. 6.

¹⁹ The table was compiled based on statistical data made for regional courts available at:

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2015/download,3169,5.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2016/download,3369,2.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2017/download,3560,6.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2018/download,3787,6.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2019/download,3823,6.html>

and for courts of appeal available at:

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2015/download,3169,3.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2016/download,3369,1.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2017/download,3560,5.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2018/download,3787,5.html>,

<https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2019/download,3823,5.html>

(accessed on: 11-09-2019).

²⁰ Updated Action Plan, p.16.

a tabular overview²¹ (Tables 1 and 2) presenting, among other things, the number of confirmed cases of excessively lengthy proceedings in which just compensation was awarded, and the average amount awarded in each category of cases. After the amendment to the 2004 Act became effective, the average sum of just compensation awarded by a regional court decreased from PLN 2,862 (approx. EUR 656) in 2017 to PLN 2,691 (approx. EUR 617) in 2018. On the other hand, the value of post-amendment awards of just compensation by courts of appeal has visibly increased over the same period, from PLN 3,897 (approx. EUR 893) to PLN 4,882 (approx. EUR 1,119). It should be noted, however, that this general increase is mainly due to a significant growth in the awards given in cases of extensively lengthy *criminal* proceedings, whose value increased from the average amount of PLN 5,722 (approx. EUR 1,312) in 2017 to PLN 8,854 (approx. EUR 2,030) in 2018. This fairly impactful upward trend, noted also by the Government in the Updated Action Plan²², should of course be welcomed, but it also should be noted that in other types of proceedings the increase was much smaller, or even non-existent: for example, the average amount of just compensation awarded in insurance cases decreased over the post-amendment period from PLN 3,576 (ca. EUR 820) in 2017 to PLN 2,515 (ca. EUR 577) in 2018.

Vacant judicial posts in common courts

19. Another factor that may have an impact on the excessive length of proceedings is the general problem of staff shortages in Polish courts. In this respect, it is worth recalling that the reform of the judiciary and changes in the retirement age of judges, which leads to many early retirements, has created many vacancies in common courts. The HFHR has been monitoring the problem for a considerable time. The Foundation obtained data on the number of vacancies in the common court system from the Ministry of Justice.

Vacant judicial posts in: ²³	As of 31 December 2017	As of 30 December 2018	As of 30 June 2019
district courts	96	115	104
regional courts	298	452	442
courts of appeal	85	178	227

20 The above data shows that, as compared to 2017, the number of vacant judicial posts has increased in courts of all levels. The increasing vacancies in district and regional courts is especially concerning as these courts deal with the most significant backlogs of cases. At the

²¹ The tables were compiled based on statistical data made for regional courts available at: <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2015/download,3169,5.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2016/download,3369,2.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2017/download,3560,6.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2018/download,3787,6.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2019/download,3823,6.html> and for courts of appeal available at: <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2015/download,3169,3.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2016/download,3369,1.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2017/download,3560,5.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2018/download,3787,5.html>, <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2019/download,3823,5.html> (accessed on: 11-09-2019).

²² Updated Action Plan, pp. 17-18.

²³ The table was compiled on the basis of data obtained under the Public Information Act by the following letters of the Ministry of Justice: of 3 April 2018, ref. BM-II-082-172/18; of 14 November 2018, ref. BK-I-082-223/18; and of 29 August 2019, ref. DKO-I-082.47.2019.

same time, nearly 500 judicial vacancies are yet unfilled in regional courts, which not only hear the most complex cases in first instance but also consider appeals against decisions of district courts. In summary, there are 773 judicial vacancies in Polish common courts. Therefore, contrary to the Government's suggestions in the Updated Action Plan²⁴, the problem of an insufficient number of judges is far from being solved.

Court assessors

21. One of the ideas to overcome the problem of vacant judicial posts was to reintroduce the position of the court assessor. As the Foundation indicated in its 2016 communication²⁵, court assessors were officially reintroduced to the Polish legal system by the Law of 10 July on 2015 amending the Courts Act and some other laws. According to Article 25a of the Courts Act, the first assignment of the assessor's position to a district court was to take place only after 30 October 2017. According to the data obtained from the Ministry of Justice²⁶, as at 31 December 2017, 349 assessor posts had been created and the number of filled posts was 350. In 2018, 92 assessor posts were created. At the same time, as at 31 December 2018, there were 346 assessor posts filled by appointment of the Minister of Justice. Moreover, 69 assessor posts were created as at 19 August 2019 and 407 assessor posts were filled as at 30 June 2019.

Seconded judges

22. Pursuant to Article 77 § 1 (2)-(2b) of the Courts Act, the Minister of Justice may second a judge, with his or her consent, to perform administrative duties at the Ministry of Justice, the Chancellery of the President of the Republic of Poland and an office supporting the minister in charge of foreign affairs. According to the data made available by the Ministry of Justice²⁷, as of the date of the reply (19 August 2019), 166 judges were seconded to the Ministry of Justice, including 119 district courts judges, 44 regional courts judges and 3 judges of courts of appeal. No judges were seconded to the Chancellery of the President of the Republic of Poland and an office supporting the minister in charge of foreign affairs. It is also worth pointing out that a judge seconded to perform administrative duties at the Ministry of Justice is officially considered to occupy their position at the relevant court. However, pursuant to Article 77 § 2b of the Courts Act, a judge's secondment to the Ministry of Justice, results in the judge being prohibited from combining their judicial and administrative roles. This leads to the situation in which the seconded judge is an active judge of a given court but does not have the right to hear or decide cases, which effectively creates a temporary (albeit unfillable) judicial vacancy.

Legal changes

23. HFHR positively assesses some of the legislative changes mentioned in the Updated Action Plan²⁸ aimed at acceleration of the court proceedings. However, in some cases the Updated Action Plan does not sufficiently clearly explain, how would given act or draft law increase effectiveness of the proceedings (e.g. *"The draft Law amending the Act - the Fiscal Criminal*

²⁴ Updated Action Plan, p. 4

²⁵ HFHR Opinion of 29 April 2016, pp. 7-9.

²⁶ The data were obtained under the Public Information Act by the following letters of the Ministry of Justice: of 3 April 2018, ref. BM-II-082-172/18; of 14 November 2018, ref. BK-I-082-223/18; and of 29 August 2019, ref. DKO-I.-082.47.2019.

²⁷ The data were obtained under the Public Information Act by the letter of the Ministry of Justice of 29 August 2019, ref. DKO-I.-082.47.2019.

²⁸ Updated Action Plan, pp. 8-11.

Code is aimed at improving the courts proceedings in fiscal criminal cases”). Moreover, it must be noted that the law amending the Code of Criminal Procedure provide certain very controversial solutions which may be incompatible with the constitutional and international human rights standards. Particulary worrisome is the introduction of the time-limits for proposing evidence (pol. *prekluzja dowodowa*) and the possibility of carrying out the evidentiary proceedings without the presence of the accused and his defense counsel²⁹. The Foundation would like to underline that the necessity to accelerate proceedings may not justify imposition of disproportionate restrictions on the rights of the accused.

IV. Summary and recommendations

24. According to the Helsinki Foundation for Human Rights, the judgment in *Rutkowski and Others v. Poland* is yet to be fully implemented and the Committee of Ministers should continue its supervision of execution of the case. Undoubtedly, the elimination of the problem of “fragmentation” of proceedings should be assessed positively. However, the statutory minimum amount of annual just compensation (PLN 500) is too low to ensure proper execution of the *Rutkowski* judgment. A negative assessment should also be given to the retention of the maximum threshold of the total amount of just compensation (PLN 20,000) that may be granted on account of the excessive length of proceedings.

25. The absence of effective implementation of the discussed ECtHR's judgment is not only a consequence of insufficiently far-reaching revisions to the 2004 Act. In order to reduce the length of proceedings, certain systemic solutions need to be put in place, which has not yet happened. The average duration of court proceedings in Poland, which has remained at a similar level in recent years, is still a cause for concern. On the other hand, there has been an increase in the number of complaints about the excessive length of proceedings submitted to Polish courts. There is also a fear that court proceedings in Poland may soon be even longer in consequence of staff shortages affecting the judicial system. There is a total of 892 judicial posts that are either vacant or occupied by seconded judges, which translates into a shortage of nearly thousand judges who are needed to perform their courtroom role. Court assessors will not remedy this deficit as their number remains stable despite the creation of new posts this year. Notably, the most vacancies exist in regional courts, while assessors may only hear cases at the district level. All these elements may cause the problem of excessively lengthy proceedings in Poland to reappear in the near future.

26. With the above in mind, the HFHR respectfully presents the following recommendations:

- A. The Committee should request the Polish Government to provide information on:
 - a. any measures taken to ensure the right to be heard within a reasonable time and to an effective remedy in excessively lengthy proceedings before Polish courts;
 - b. the effectiveness of the measures taken so far;
 - c. any planned further measures aimed at the execution of the *Rutkowski* judgment.

²⁹ See: HFHR opinion of 27 February 2019 on the draft Law amending the Act - the Code of Criminal Procedure and some other acts, <https://www.hfhr.pl/wp-content/uploads/2019/02/opinia-do-projektu-zmiany-przepis%C3%B3w-kodeksu-post%C4%99powania-karnego.pdf> (accessed on: 11-09-2019).

- B. The Committee of Ministers of the Council of Europe should consider adding the matter of the general execution of the ECtHR judgment in *Rutkowski and Others v. Poland* to the agenda of its next session.

27. In the HFHR's view, in order to fully execute the *Rutkowski* judgment, Polish Government should introduce the following changes:

- a. The minimum amount of just compensation payable for the excessive length of proceedings, (currently PLN 500 for each year of the duration of excessively lengthy proceedings) should be increased at least to a level compliant with the standard set by the ECtHR in *Apicella v. Italy*;
- b. The wording of Article 12(4) of the 2004 Act should be amended so as to remove the upper limit for the amount of money payable as just compensation for the excessive length of proceedings;
- c. The Courts Act should be amended so that the judges who have been seconded to perform administrative duties and who, in accordance with Article 77 § 1(2b) of the Courts Act, are unable to hear and decide cases, are no longer considered active judges of their native courts;
- d. Liquidation of judicial vacancies by providing an adequate number of judges, as well as administrative staff serving judges.

28. The Helsinki Foundation for Human Rights wishes to express its willingness to further assist the Committee of Ministers of the Council of Europe in the monitoring of the proper execution of the judgment of the European Court of Human Rights in the case *Rutkowski and Others v. Poland*.

On behalf of Helsinki Foundation for Human Rights,



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Secretary of the Board

Helsinki Foundation for Human Rights



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Table 1. Compensation awarded for excessive length of proceedings by regional courts in Poland

Year	Types of cases	Together	Cases in which an amount of compensation was awarded	Overall sum of compensation awarded (PLN))	Average amount of compensation awarded in a case (PLN)
2015	Overall	13,111	1,480	4,240,299	2,865
	Criminal cases	2,041	282	839,700	2,977
	Civil cases	10,447	1,026	2,913,800	2,840
	Insurance cases	36	8	20,000	2,500
	Labour cases	115	25	86,500	3,460
2016	Economic cases	472	139	380,299	2,736
	Overall	10,865	1,502	4,570,621	3,043
	Criminal cases	1,869	303	991,000	3,270
	Civil cases	8,425	1,037	3,082,621	2,927
	Insurance cases	44	6	11,500	1,916
2017	Labour cases	122	22	97,000	4,409
	Economic cases	405	134	388,500	2,899
	Overall	11,401	1,286	3,680,800	2,862
	Criminal cases	1,822	216	699,000	3,236
	Civil cases	9,006	936	2,615,300	2,794
2018	Insurance cases	49	6	12,000	2,000
	Labour cases	92	17	47,500	2,794
	Economic cases	432	111	307,000	2,765
	Overall	11,853	1,723	4,636,721	2,691
	Criminal cases	1,769	208	701,000	3,370
H1 2019	Civil cases	9,408	1,241	3,306,121	2,664
	Insurance cases	33	5	13,000	2,600
	Labour cases	84	12	25,500	2,125
	Economic cases	559	257	591,100	2,300
	Overall	6,916	1,028	2,861,800	2,783
	Criminal cases	999	124	498,500	4,020
	Civil cases	5,487	749	2,002,800	2,673
	Insurance cases	20	3	10,000	3,333
	Labour cases	50	14	35,500	2,535
	Economic cases	360	138	315,000	2,282

Table 2. Compensation awarded for excessive length of proceedings by courts of appeal in Poland

Year	Types of cases	Together	Cases in which an amount of compensation was awarded	Overall sum of compensation awarded (PLN))	Average amount of compensation awarded in a case (PLN)
2015	Overall	4,844	218	750,800	3,444
	Criminal cases	451	71	292,500	4,199
	Civil cases	3,863	98	319,500	3,260
	Insurance cases	144	18	51,000	2,833
	Labour cases	44	7	21,800	3,114
2016	Economic cases	342	24	66,000	2,750
	Overall	5,643	263	1,143,500	4,347
	Criminal cases	414	104	469,500	4,514
	Civil cases	3,890	105	484,000	4,609
	Insurance cases	142	26	94,500	3,634
2017	Labour cases	53	7	18,000	2,571
	Economic cases	1,144	21	77,500	3,690
	Overall	5,491	209	814,500	3,897
	Criminal cases	415	74	423,500	5,722
	Civil cases	4,747	102	292,500	2,868
2018	Insurance cases	124	13	46,500	3,576
	Labour cases	58	1	2,000	2,000
	Economic cases	147	19	50,000	2,632
	Overall	6,315	246	1,201,140	4,882
	Criminal cases	535	59	522,400	8,854
H1 2019	Civil cases	5,405	156	585,000	3,750
	Insurance cases	214	16	40,240	2,515
	Labour cases	48	5	21,500	4,300
	Economic cases	113	10	32,000	3,200
	Overall	3,259	128	556,020	4,343
	Criminal cases	317	31	255,520	8,242
	Civil cases	2,766	80	251,500	3,143
	Insurance cases	90	6	14,000	2,333
	Labour cases	22	4	12,000	3,000
	Economic cases	64	7	23,000	3,285