

# **In search of reasonable time... of court proceedings**

Highlights of a report on the excessive length  
of proceedings in Poland



**HR** HELSINKI FOUNDATION  
FOR HUMAN RIGHTS

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“Everyone shall have the right to a fair and public **hearing of his case, without undue delay**, before a competent, impartial and independent court.”

**Article 41 of the Constitution of the Republic of Poland**

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public **hearing within a reasonable time** by an independent and impartial tribunal established by law.”

**Article 6 of the European Convention on Human Rights**

## Why was our report written?

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- On 7 July 2015, the European Court of Human Rights in Strasbourg decided the case of *Rutkowski and Others v. Poland*, finding that the problem of excessively lengthy proceedings in Poland is systemic.
- Five years after the *Rutkowski* judgment was passed, the Helsinki Foundation for Human Rights decided to investigate whether and if so, to what extent, the judgment has had an impact on the actions of Polish authorities as well as the functioning of the domestic justice system.

## What changes have been made after the judgment?

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- The Strasbourg judgment prompted the Polish lawmakers to amend the Act of 17 June 2004 on the complaint on the infringement of the party's right to have their case examined in preparatory proceedings conducted or supervised by a prosecutor and in court proceedings without undue delay (the "Excessively Lengthy Proceedings Complaint Act").
- On 6 January 2017, an amendment to the Excessively Lengthy Proceedings Complaint Act came into force, aiming to eliminate the courts' practice of "fragmented" assessment of the length of proceedings. The amendment also provided that in if proceedings are found to be excessively lengthy, a minimum amount of PLN 500 should be granted to the applicant for each year of the proceedings.
- In the time that has passed since the *Rutkowski* judgment was issued, many changes made to the Polish justice system have been affecting its operation.
- Although the lawmakers argued that the changes were by and large introduced to accelerate judicial proceedings, the long duration of trials has remained a major weakness of the justice system in Poland.
- The Council of Europe's Committee of Ministers has been consistently calling for further changes, calling them "necessary". In a decision of 4 June 2020, The CoM emphasised that Polish Government should take action to improve the efficiency of the courts noting that any such action must respect the principle of the independence of the judiciary.

## What do statistics say about the functioning of the justice system in Poland?

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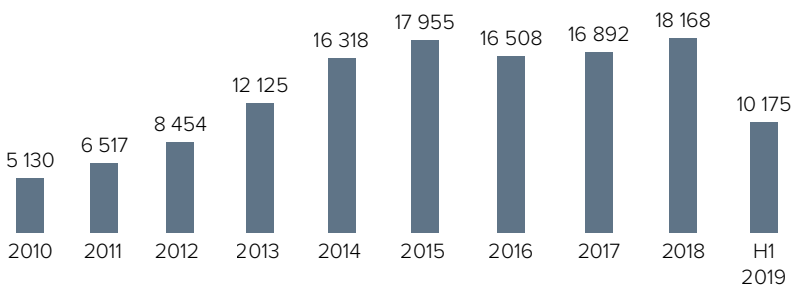
→ In 2010-2018, Polish courts of common jurisdiction annually received between 12,934,771 and 15,782,479 cases.

→ The majority of cases submitted to common courts are civil matters. In the aforementioned period, the annual intake of new civil cases ranged from 8,906,633 to 11,127,035. Criminal cases are the second largest group. In 2010-2018, common courts registered between 2,321,762 and 2,806,186 new criminal cases each year.

→ On average, in 2011-2018 proceedings pending before Polish

regional and district courts lasted from 4.1 to 5.5 months.

→ The number of complaints against the excessive length of proceedings filed annually between 2010 and 2018 ranged from 5,130 to 18,168. A sharp increase in the number of complaints was recorded in 2010-2015. As compared to 2010, nearly 13,000 additional complaints were submitted in 2015. This means that the complaint has become a more popular remedy against the excessive length of proceedings during the period considered.



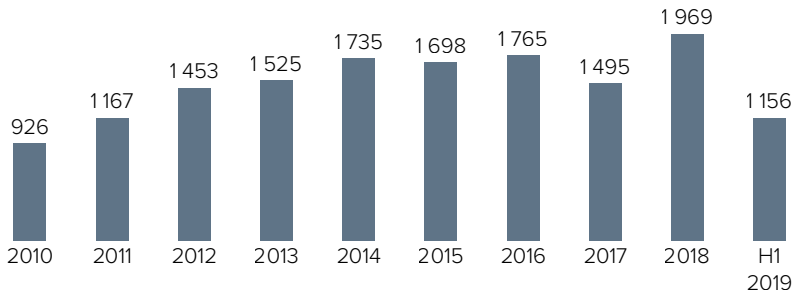
*The number of complaints against the excessive length of proceedings in courts of appeal and regional courts<sup>1</sup>*

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1 The chart was based on the following documents: *Ewidencja spraw z wykazu S w sądach apelacyjnych* [Register of S-list cases in the courts of appeal] (for 2010-2018 and January-June 2019) and *Ewidencja spraw z wykazu S w sądach okręgowych* [Register of S-list cases in regional courts] (for the

→ In 2010-2018, the annual number of excessive length complaints that led to the award of financial compensation ranged from 926 to 1,969.

2018 saw the all-time high number of successful complaints, with appeal and regional courts awarding compensation in almost 2,000 cases.



*The number of excessive length complaints that led to the award of financial compensation<sup>2</sup>*

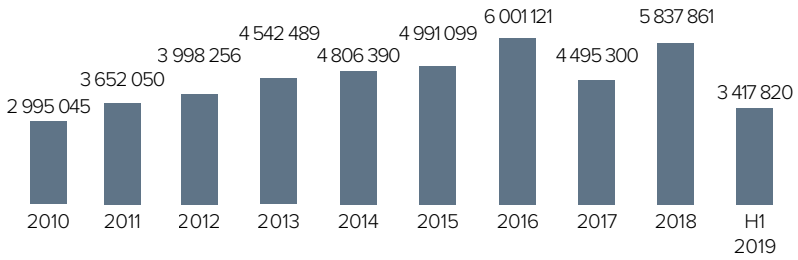
→ Between 2010 and 2018, the total annual value of awards given by courts of appeal and

regional courts ranged between PLN 2,995,045 and PLN 6,001,121.

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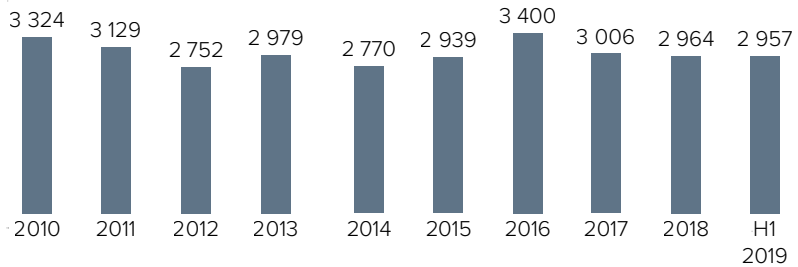
same period) provided by the Ministry of Justice to the HFHR in response to a public information request submitted under the Access to Public Information Act ("APIA") in a letter dated 11 May 2020 ref BK-I.082.104.2020 and published by the Ministry of Justice at <https://www.isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/>.

2 Ibid.



*The total annual value of awards given by courts of appeal and regional courts (in PLN)<sup>3</sup>*

→ The average value of an award of compensation for the excessive length of proceedings adjudged by these courts in the above period was relatively constant and ranged from PLN 2,770 to PLN 3,400.

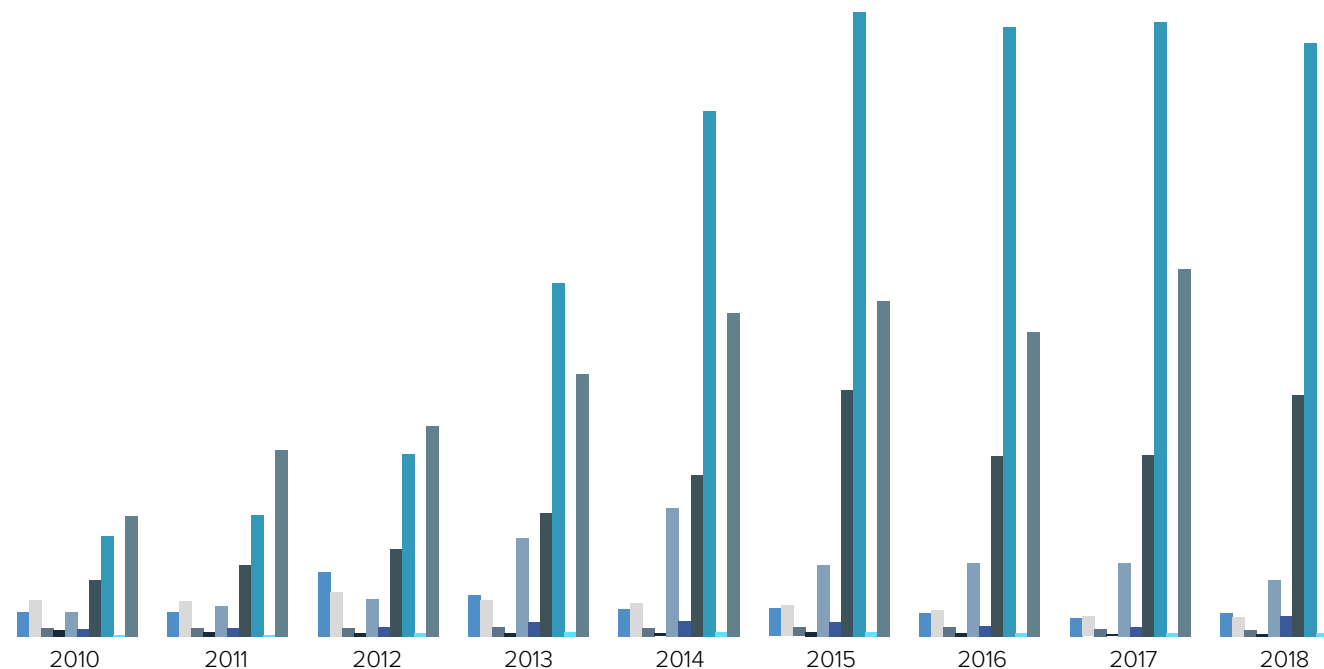


*The average value of an award of compensation for the excessive length of proceedings (in PLN)<sup>4</sup>*

3 Ibid.

4 Ibid.

## The reasons for filing a complaint against the excessive length of proceedings<sup>5</sup>



|   | 2010  | 2011  | 2012  | 2013  | 2014  | 2015  | 2016  | 2017  | 2018  |
|---|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| The date of the first session in the case is too distant  | 329   | 329   | 851   | 552   | 362   | 370   | 315   | 244   | 306   |
| Intervals (recesses) between court sessions are too long  | 484   | 470   | 587   | 481   | 447   | 410   | 348   | 264   | 254   |
| Court-appointed experts failing to timely deliver their reports or further experts' reports are commissioned by the court | 112   | 106   | 111   | 124   | 109   | 118   | 123   | 98    | 91    |
| The unreasonable use of measures suspending proceedings   | 84    | 58    | 45    | 40    | 39    | 55    | 48    | 26    | 30    |
| The excessive length of preliminary procedures  | 322   | 408   | 500   | 1 301 | 1 694 | 942   | 969   | 974   | 742   |
| The excessive length of pre-appeal proceedings  | 97    | 113   | 124   | 186   | 206   | 194   | 135   | 125   | 270   |
| The excessive length of the execution proceedings   | 748   | 949   | 1 155 | 1 635 | 2 136 | 3 261 | 2 383 | 2 405 | 3 197 |
| Inactive approach to case management  | 1 326 | 1 612 | 2 409 | 4 681 | 6 954 | 8 263 | 8 069 | 8 125 | 7 854 |
| The delayed drafting of statements of grounds   | 25    | 23    | 51    | 58    | 59    | 54    | 46    | 43    | 42    |
| Other   | 1 594 | 2 470 | 2 784 | 3 474 | 4 280 | 4 438 | 4 030 | 4 867 | 5 317 |

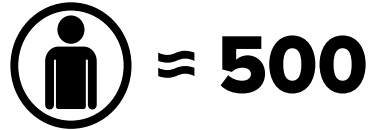
<sup>5</sup> The chart was based on statistical data provided by the Ministry of Justice to the HFHR in response to a public information request submitted under APIA in a letter dated 11 May 2020 ref. BK-1.082.104.2020.



# What do lawyers think about the excessive length of proceedings in Poland?

## The HFHR survey

→ Nearly 500 lawyers (*adwokaci* and *radcowie prawni* and judges) responded to our survey.



→ The vast majority of the surveyed lawyers (**95.8%**) said that the problem of excessively lengthy proceedings in Poland is systemic.



95,8% | The problem of excessively lengthy proceedings is systemic

→ The key reasons for the excessive length of proceedings identified by lawyers are:



75% | The length of recesses between court sessions



63,2% | The courts' inactive approach to case management



73,9% | Setting a distant date of the first session in the case



59,1% | Organisational mismanagement in the courts



70% | The delayed delivery of experts' reports / the court-ordered commission of further experts' reports

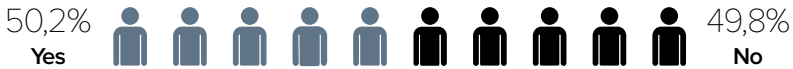


52,7% | Insufficient judicial manpower



50% | High procedural formalism

## Have you ever submitted a complaint about the excessive length of proceedings?



→ Only **11.6%** of the surveyed lawyers said that the complaint against the excessive length of proceedings is an effective remedy to prevent procedural backlogs.



11,6%

The complaint is an effective remedy to prevent procedural backlogs

→ A considerable **76.7%** of the surveyed lawyers admitted that the main problem related to this remedy is the complainant's concern that the judges conducting the principal (excessively lengthy) case would become prejudiced against the complainant. **53%** of the respondents pointed out that initiating such the complaint procedure does not contribute to the acceleration of the proceedings concerned.



76,7%

The concern that the judges conducting the principal case would become prejudiced



53%

Initiating the complaint procedure does not accelerate the proceedings



43,9% | The low value of awards made by the courts



35,5% | Low statutory compensation limits



36,5% | The fragmented assessment of the duration of proceedings



32,9% | A high level of formalism in the examination of excessive length complaints

## What reforms should be undertaken?

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- 1.** Out-of-court dispute resolution methods should be promoted.
- 2.** A change in the organisation of judges' work is needed to ensure that more procedural steps can be taken at once (longer, more frequent hearings instead of one-hour hearings held once every few months).
- 3.** The re-establishment of the Civil and Criminal Law Codification Commissions, which should result in a more stable legal environment and ensure that any changes to the law are more rational and reasonable.
- 4.** The law-making process in the area of justice should be preceded by extensive discussions with scholars and professionals, as well as broad public consultations.
- 5.** The long-awaited Court Experts Act should be enacted.
- 6.** The mechanisms used to assess judges' judges time management skills and deadline discipline should be brought in line with the reality; any such assessment must respect the independence of the judiciary and judges.
- 7.** The minimum pecuniary award for each year of excessively lengthy proceedings (PLN 500) should be increased at least to an amount consistent with the standard set by the ECtHR in *Apicella v Italy* (PLN 1,000 to PLN 1,500).
- 8.** Article 12 (4) of the Excessively Lengthy Proceedings Complaint Act should be amended to remove the upper limit of pecuniary awards paid to compensate for damage resulting from the excessive length of proceedings.

# HFHR recommendations

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## 1. Organisation of the justice system

**a.** Judicial vacancies will be filled and the practice of frequent transfers of judges between different divisions of their court should be discontinued.

**b.** More judges' clerks should be employed.

**c.** The courts should receive more funding to increase the impact of new technologies and electronic tools on the conduct of proceedings.



## 2. Professional training and education

**a.** Judges should receive appropriate education and training in the following areas: the standards of the European Court of Human Rights, managing and ensuring compliance by the parties and experts, using new technologies in order to expedite the proceedings without compromising their integrity.

**b.** Legal counsel should be educated and trained to make better use of Strasbourg standards in excessive length complaint proceedings to interpret the notion of “reasonable time” and “adequate award”.



## 3. Evaluation of the work of courts

**a.** A move away from fragmented statistics is needed. Since the statistics released by the Ministry of Justice separately describe the length of proceedings pending in the court of first and second instance, the figures fail to show the entire duration of court proceedings in a given case, as perceived by the “clients” of the justice system.

**b.** According to the statistics of the Ministry of Justice, nearly 30% of all complaints against the excessive length of proceedings are submitted for “Other” causes – this category should be clearly explained as the identification of such causes may be crucial for diagnosing the problems affecting the Polish justice system.

## About the authors:

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**Adam Klepczyński** – an advocate trainee, a lawyer of the Strategic Litigation Programme of the Helsinki Foundation for Human Rights since July 2017. Before joining the SLP legal team, he was involved in the Foundation’s Article 32 Anti-discrimination Programme, Legal Intervention Programme and was involved in the project Monitoring of the Legislative Process in the Area of Justice System. He graduated from the Faculty of Law and Administration of the University of Warsaw.

**Piotr Kładoczny, PhD** – Secretary of the Board and Head of the Legal Department of the Helsinki Foundation for Human Rights, responsible for supervising the Foundation’s legal and intervention programmes. A lecturer at the Institute of Criminal Law of the University of Warsaw, author and a co-author of dozens of publications on substantive criminal law and criminal procedure, criminal enforcement law, human rights and drug policy; a frequent speaker at conferences and expert seminars. Dr Kładoczny has been involved in many EU projects in the field of criminal law and human rights. He is a member of the Legal Experts Team at the Batory Foundation.

**Katarzyna Wiśniewska, PhD** – an advocate and the Coordinator of the HFHR’s Strategic Litigation Programme. An expert of many European and international projects on criminal law, criminal enforcement law and human rights. She sits on the Legal Experts Advisory Panel, the lawyers’ forum at Fair Trials International. In 2015, she was listed in the Risings Stars – Leaders of Tomorrow ranking, compiled by national daily newspaper *Dziennik Gazeta Prawna*. Ms Wiśniewska was appointed by the Ombudsman to the Committee of Experts of the National Mechanism for the Prevention of Torture. She is an expert on human rights strategic litigation.





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