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POLAND AND THE EUROPEAN COURT OF HUMAN RIGHTS

SELECTED ISSUES AND RECOMMENDATIONS

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INTRODUCTION AND OBSERVATIONS

The idea for this report started following my experiences representing a Polish citizen as an applicant before the Court in a case involving issues of pre-trial detention. This experience raised a lot of questions about how Poland deals with cases in front of the Court within the Government, from the perspective of the Applicants and the impact of the Court on Polish law and practice.

This report is not intended to be a comprehensive listing of Poland's experiences with the European Court of Human Rights, a guide to Poland's case law, or a comprehensive guide to practicing before the Court. Instead our goal was to look at some specific areas involving Poland and the Court and to contribute to the discussion within Poland on the Court and Convention with some recommendations for improvement where needed.

This report was prepared using a mix of methodologies. Research was conducted where appropriate, as were interviews and/or written questionnaires with many of the individuals most involved with Poland's work with the Court.

I would like to thank those who took the time to participate in the preparation of the report. We have intentionally chosen not to credit particular comments or statements to particular individuals we contacted in the interest of promoting a full exchange of ideas and candid discussion. Any errors contained in the report the authors take full responsibility for and are in no way the responsibility of those we cooperated with in discussing this report.

Some general observations might also be in order at this point. First, we were greatly impressed with the work done by Ambassador Jakub Wolasiewicz and his department at the Ministry of Foreign Affairs in acting as the Government agent in front of the Court. Their job is to defend against allegations of human rights violations by other actors in Poland, never an easy job. However, the Ambassador's candor, professionalism and practical approach to his job are evident. This department sees its role as not only blindly representing the Government of Poland, right or wrong, but as an agent for the protection of rights and improvement of the government's provision of services.

We are also grateful for the assistance provided by the Human Rights Department in the Ministry of Justice. Their job is even more difficult than their colleagues in the MFA as the MOJ and its related organs are home to the vast majority of human rights violations filed at the Court. Recent changes at the Ministry and a sense of the importance of their role in protecting human rights bodes well for Poland and the Ministry in the future.

May 2011
Delaine R. Swenson

FILING A CASE BEFORE THE COURT AND THE RESPONSE OF THE POLISH GOVERNMENT

The procedure involving an individual claiming to be a victim of a violation of the European Convention on Human Rights starts before the European Court of Human Rights with an individual application filed directly to the Court in Strasbourg alleging a breach by a Contracting State of one of the Convention rights. This case Registry initiates a preliminary examination of the application. After preliminary examination and a finding that an application meets all the admissibility criteria, the selected Chamber of the ECHR communicates the case to the respondent Government and it may invite the parties to submit further evidence and written observations.

For cases where Poland was the respondent country in 2010 5,777 cases were assigned to a judicial formation and 3,924 were struck out or found inadmissible[1].

Once the case has been communicated to the Government of Poland, the opportunity exists for the Government to choose either to reach a friendly settlement with the applicant or to make a unilateral declaration of acceptance of a violation of the Convention and a settlement on just satisfaction in the amount of compensation. The Court following friendly settlements and/or unilateral declarations in 2010 struck out one hundred and forty cases against Poland. In 2009 there were one hundred and seventy eight such cases[2].

In addition to communicating the case to the Government the Chamber may ask for certain case documents, and it may ask the parties to answer certain factual and legal questions necessary to resolve the case. The individual requests of the Chamber will depend on the circumstances of the particular case. In Poland the primary responsibility for responding to cases filed at the Court rests with a dedicated department located at the Ministry of Foreign Affairs. This department begins the process of analysis of the case and requests the interested government organs involved in the case to respond by supplying them with all the appropriate records in the case. The interested state organs are also asked to respond with their opinions on the questions that have been presented by the Court when the case was transmitted. The interested state organ is the

1 Statistics from the European Court of Human Rights.

2 Ibid.

part of government that was dealing with the original case. In approximately 90 % of cases the Ministry of Justice is also contacted, as the cases filed by Polish applicants to the European Court mainly deal with criminal and civil trial matters. As to administrative cases, the proper ministry is contacted. If the case deals with a criminal matter, a judge from the Ministry of Justice is examining the case in conjunction with the original organ that was involved in the case. The Ministry of Justice has a dedicated department within its Human Rights Department for dealing with the cases from the European Court of Human Rights.

Once all the analysis is finished and collected, it is Ministry of Foreign Affairs that prepares the final observations to be sent to the Court and the applicant. These observations include answers to the Courts questions and documents requested by the Court and any others seen as important by the Government. The Ministry of Foreign Affairs has final say on how the Government of Poland will respond to cases before the Court, not the agency or ministry of the original complaint.

When the case is transmitted to the government, the Applicant is given the opportunity to name legal counsel in the case. Once the government has responded to the Court, the applicant is then given time to respond to the observations of the government, to answer the questions presented by the Court, and to submit a claim for just satisfaction. The government then has a right to respond to these submissions from the Applicant including the governments position on any requested just compensation should a violation of the convention be found by the Court.

If no hearing has taken place at the admissibility stage, the Court may decide to hold a hearing on the merits of the case. However, in a majority of cases, decision is made strictly based on the written submission of the parties.

At each step of the proceeding friendly settlement is possible. If a friendly settlement is effected, the application shall be struck out of the Court's list of cases by means of a decision of the Court. The Ministry of Foreign Affairs usually proposes friendly settlement in repetitive cases, cases where the Court has previously found a violation of the Convention and the only remaining issue is determining just compensation. Poland is presently one of the leading countries in applying successfully the pilot judgment procedure[3].

If no friendly settlement is reached then the responsible Chamber of the Court makes a decision in the case following a majority vote. When a final judgment includes a finding that there was a violation of the Convention, the case file is transmitted to the Committee of Ministers of the Council of Europe, the organ responsible for supervision of executing judgments of the ECHR. A State-Party to the Convention is obliged to present a report concerning the execution of judgments. Such report is a basis for the Committee to analyze a state's obligation resulting from the judgment.

According to Art. 46 of European Convention on Human Rights "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties". The state in question may have three main obligations as a result of a violation: to pay compensation (just satisfaction), to adopt general measures, to prevent violations in future (amendments in legislation) or to adopt individual measures, to achieve, as far as possible, "*restitutio in integrum*" (ex. reopening

3 The Pilot Judgment Procedure will be discussed in more detail later on in the report.

of the proceedings). The method of executing individual judgments is up to the state in question. In "pilot" judgments the Court is addressing country structural problems and a state is obliged to amend the law to prevent further violations. However each judgment should be executed in such a manner that future violations in similar cases will not take place.

In Poland the governmental body that is responsible for the execution of judgments is the Inter-ministerial Working Group for the European Court of Human Rights, which was created by the Prime Minister in 2007. The main task of this Working Group is to prepare opinions on actions designed to prevent future violations and to monitor performance of the Government Program and Policies on executing the judgments of the ECHR. The Working Group consists of the Plenipotentiary for proceedings before the ECHR, the Deputy Plenipotentiary for proceedings before the ECHR and experts from each of the ministries.

The Program and Policies on executing the judgments of the ECHR was prepared by a Working Group at the Ministry of Foreign Affairs and accepted by the Government on 17 May 2007[4]. The program addresses certain violations of the Convention and advisory opinions as well as how to react to such violations and how to stop future ones. It includes exact propositions how to implement judgments. The last decision on execution of judgments belongs to the Prime Minister's experts, who decide how to implement the judgment.

Efficient execution of judgments is one of the priorities of the Council of Europe, who works to guarantee the effectiveness of the ECHR system. In January 2011 Poland was included in a group of nine countries that are failing to execute judgments in a timely fashion, although the Polish Government is implementing the judgments, there remains problems with repetitive cases. These judgments mainly concern excessive length of judicial proceedings or issues of detention. At the same time Poland is said to be a country that is in very good cooperation with the European Court of Human Rights.

The Human Rights Department at the Ministry of Justice pays an active role in disseminating the results of decisions from the ECHR. Following a judgment, the department prepares a short summary of the decision and publishes it on their website and a decision is made on whether or not to translate the whole opinion of the Court or not. The department would prefer to translate all significant cases but some times the resources to do so are not available. If there is a problem that lies behind a particular judgment of a Polish court, the decision is transmitted to the particular court involved and if a grave breach of law has been found then the Department of Common Courts in the Ministry is informed. Every two months a summary of relevant happenings concerning the Court and the law is sent to judges and prosecutors and some times attention is focused on particular issues.

4 Zarządzenie Nr 11 Ministra Spraw Zagranicznych z dnia 28 czerwca 2006 r., w sprawie utworzenia Zespołu Roboczego przy Ministrze Spraw Zagranicznych do spraw przygotowania Programu Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka wobec Rzeczypospolitej Polskiej, Dz. Urz. MSZ z dnia 25 lipca 2006 r., Nr 4, poz. 238.

POLAND'S CASE LAW AT THE EUROPEAN COURT OF HUMAN RIGHTS

A review of the case law that has developed from January 1, 2000 to May 31, 2011 with Poland as the respondent Country presents an interesting snapshot of the development of domestic human rights law and practice and constitutes some of the most important case law in the Convention and Court's history.[5] During this period of time here were a total of 867 cases where a reported decision was made with Poland as the Respondent country. The Court divides these cases into three levels of importance based on the following listings:

HIGH IMPORTANCE: Judgments that the Court considers make a significant contribution to the development, clarification or modification of its case law, either generally or in relation to a particular State.

MEDIUM IMPORTANCE: Judgments that do not make a significant contribution to the case law but nevertheless do not merely apply existing case law.

LOW IMPORTANCE: Judgments with little legal interest - those applying existing case law, friendly settlements and striking out judgments (unless these have any particular point of interest).

Of the 867 cases involving Poland, 49 or 6% of all cases are rated by the Court of High importance, 113 or 13% are rated as Medium importance and 705 or 81% are rated as Low importance[6]. These numbers for the most part reflect the repetitive nature of the cases before the Court and the fact that most cases fall within several common problems associated with Article 5 - Right to Liberty and Security (Detention), Article 6 - Rights to a Fair Trial and Length of Proceedings and Article 8 - Right to Respect Family and Private Life[7]. In the early part of the decade there were a considerable number of cases involving Article 1 of Protocol I to the ECHR, the right to peaceful enjoyment of possessions. Most of these issues involving these property cases have since been resolved.

5 All case analysis is the work of the author's using the Court's online case research system, HUDOC located at www. echr.coe.int/echr/en/hudoc/.
6 See Chart No. 6.
7 See Chart No. 5.

Poland also was the Country to first have a case using the pilot judgment procedure in *Broniowski v. Poland*[8] and next in *Hutten-Czapska v. Poland*[9]. The Pilot judgment procedure is a procedural tool that is designed to deal with repetitive well-founded applications where the Court has identified a structural or systematic violation in a pilot judgment that would trigger an accelerated judgment procedure. This procedure would involve both taking steps to remedy the systematic problem identified by the Court and also the adoption of retroactive measures within the domestic system to redress the harm sustained by other victims of the violation. In both the *Broniowski* and *Hutten-Czapska* cases the violation related to property rights of the Applicants. The creation of this procedure, and the Polish government's acceptance of the value of the procedure for repetitive cases is an important element in the development of the jurisprudence of the European Court of Human Rights and the settlement of repetitive cases here in Poland[10].

8 Case of Broniowski v. Poland, (Application no. 31443/96), 2004, 2005.
9 Hutton-Czapska v. Poland, (Application no. 35014/97) 2006, 2008.
10 See more: A. Buyse, The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges, Nomiko Vima (The Greek Law Journal) 2009, Vol. 57, pp. 1890-1902.

A SAMPLE OF SOME OF THE NOTABLE CHANGES IN THE POLISH LEGAL SYSTEM DUE TO DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

SYSTEMATIC PROBLEMS

LENGTH OF JUDICIAL PROCEEDINGS

Following the judgment in *Kudła v. Poland*[11] a new law was introduced, largely modeled on the Italian *Pinto* law[12], providing remedies in case of excessively long judicial proceedings. On September 17, 2004, the Act from June 17, 2004 concerning complaints about a breach of the right to a trial within a reasonable time entered into force. This procedure was heavily amended on February 20, 2009 (which came into force on May 1, 2009).

RIGHT TO COMPENSATION FOR PROPERTY SITUATED BEYOND THE PRESENT BORDERS OF THE POLISH STATE

In *Broniowski v. Poland*[13] case the pilot judgment procedure was applied for the first time ever. Under such procedure the ECHR gives a judgment that finds a systematic and widespread violation of a right or rights protected by the European Convention and orders the national Government to provide general measures at the national level to redress the breach found[14]. In the *Broniowski* case a violation of art. 1 of Protocol I was found. As a result of the judgment legislation was adopted: the Act of July 8, 2005 on the recognition of the right to compensation for property situated beyond the present borders of the Polish State.

CHANGES IN THE CODE OF CRIMINAL PROCEDURE OF 1997

There have been several judgments where the Polish Constitutional Court has found that provisions of the Code of Criminal Procedure are inconsistent with the provisions of the Polish Constitution and has referred to the decisions of the European Court of Human Rights.

11 Appl. no. 30210/96 (Judgment of the Grand Chamber on October 26, 2000).
12 M. Krzyżanowska – Mierzewska, The Reception Process in Poland and Slovakia [in:] H. Keller, A. Stone Sweet, A Europe of Rights. The Impact of ECHR on the National Legal Systems, Oxford University Press 2008, p. 578.
13 Appl. no. 31443/96, (Judgment of Grand Chamber on June 22, 2004).
14 M. Krzyżanowska – Mierzewska, p. 556.

As an example some of the following changes were made:

- Article 632 p. 2 concerning some aspects of the reimbursement of the cost of procedure was found inconsistent with the Constitution and a new Article 632 was adopted.[15]
- Article 263 § 4 concerning some aspects of the extending of the length of detention on remand was found inconsistent with the Constitution.[16] This provision was then amended.
- Article 263 § 3 concerning the possibility to extend the length of detention on remand was found inconsistent with the Constitution.[17] A new § 3a of this Article was then adopted.
- Article 156 § 5 concerning access to materials on which the decision of detention on remand during pre-trial procedure is made was found inconsistent with the Constitution[18] and then a new § 5a was adopted.
- Article 236 § 2 concerning some aspects of searching was repealed.[19]

OTHER CHANGES

- **Prisoner's right to respect for their correspondence**

  Relevant provisions of the Code of Enforcement of Criminal Sentences were amended in September 2003 as a result of cases in which the prison administration was found by the European Court of Human Rights to be too eager to open prisoner's correspondence.
- **Excessive court fees**

  On July 28, 2005 the new Law on Court Fees in civil cases was adopted based on previous judgments of the ECHR.[20]
- **Length of administrative procedure**

  On December 3, 2010 a new claim was introduced to the Code of Administrative Procedure concerning the extensive length of administrative procedure, it came into force on April 11, 2011. It fills the legislative gap that the European Court of Human Rights has focused on in some cases against Poland involving administrative procedure.

15 Judgment on 26 July 2006, SK 21/04.
16 Judgment on 24 July 2006 r., SK 58/03.
17 Judgment on 10 June 2008, SK 17/07, (77/5/A/2008).
18 Judgment on 3 June 2008, K 42/07.
19 Judgment on 3 July 2008 r., K38/07, (102/6/A/2008)
20 Kreuz v. Poland, appl. no. 28249/95 (Judgment on June 19, 2001).

IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS - PROBLEM WITH LAW OR PRACTICE?

There are divided opinions of experts concerning the question if the problem with the implementation of the European Convention and the European Court of Human Rights judgments is caused more by faulty law or by wrong practice. From a review it is obvious that many factors have an influence on the process of implementation.

THE LAW

During the legislative process there is no mechanism to assess and ensure the compatibility of law - bills and other regulations – with the standards of the European Convention. Admittedly, there is one body: the Legislative Council (Rada Legislacyjna) whose main task is to ensure the good quality of legislation, but their role in the legislative process "appears to be largely disregarded by Members of Parliament"[21]. However, there is no obligation to assess the compatibility of the bills and regulations with international human rights legal standards (like i.e. the assessment of the compatibility of domestic regulations with the European Union *acquis communautaire*). Furthermore, the Legislative Council has no competence of legislative initiative, meaning they cannot bring to Parliament drafts of new bills to change or correct the law.

There exists therefore a need for a permanent review of Polish laws to find those provisions that are incompatible with the European Convention and its jurisprudence. On May 17, 2007 the Polish Government passed the Governmental Plan of Action concerning implementation of judgments of the European Court of Human Rights (Program Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka). A Working Group at the Ministry of Foreign Affairs prepared the action plan. This document contains first of all guidelines regarding the 16 main problems of the polish legal system connected with ECHR judgments. It should be underlined that some changes have already been completed according to that program, for instance in 2007 the regulation concerning the protection of the Prison Service (Rozporządzenie Ministra Sprawiedliwości z 31 października 2003 r. w sprawie sposobów ochrony jednostek organizacyjnych Służby Więziennej) has been amended so as to eliminate unnecessary body searches of prisoners. Subsequent actions should be also taken to resolve other principle problems.

21 M. Krzyżanowska – Mierzawska, op. cit., p. 584.

In addition, some provisions of the Polish Constitution enable the examination of conformity of statutes and ordinances with ratified international agreements – such as the European Convention on Human Rights – by the Constitutional Court. According to article 197 of the Constitution any court may refer such a question of compatibility to the Constitutional Court if the answer to this question is relevant for the outcome of a case pending before that court. However, this mechanism has been rarely used so far to test the compatibility of laws specifically with the European Convention[22]. It is important to emphasize that the Polish model of individual constitutional complaint doesn't allow an individual, whose constitutional freedoms or rights have been infringed, to seek examination by the Constitutional Court of the compatibility of the Polish statutes and ordinances with international agreements, such as the European Convention, as such an examination can only refer to the compatibility of statutes and ordinances with the Constitution itself[23].

PRACTICE

Polish courts of a higher instance refer to the European Convention quite often. The Supreme Court started to refer to the Convention even before its entry into force[24]. On many occasions the Constitutional Tribunal has also referred to the Conventions and jurisprudence of the ECHR. Nevertheless, the practical role played by the European Court and its judgments in the everyday practice in lower level courts "remains rather modest"[25]. Advocates and lower court judges hesitate to invoke the jurisprudence of the ECHR in their pleadings or in written grounds for judgments. The advocates have often strong convictions that a lower court would overlook or ignore that reference or even be "annoyed by being lectured by an advocate and would therefore react negatively"[26]. Similarly, the judges of lower courts are afraid of the reaction of their senior colleagues on higher benches, who have administrative supervision of their judicial decision[27].

It addition it is stressed that the lack of invoking the jurisprudence of ECHR is also connected with the general unwillingness of Polish judges to refer to public law, even to the Constitution, as they are strongly specialized in civil or criminal matters and are not prepared enough to resort to international law. This could also be connected with the historically unclear relationship that exists in the Polish legal system between domestic and international law[28].

Another barrier to effective implementation of the jurisprudence of the Court is the issue of education of Polish judges, prosecutors and lawyers relating to the Court. This relates to both the substance of the law as reported in Court decisions interpreting the Convention and in developing the skills and ability to apply a legal system based on precedence which remains a new undertaking for most Polish legal practitioners.

22 In 2010 the Constitutional Court answered such question on request of the one court from Lublin (Sąd Rejonowy w Lublinie) concerning Article 392 §1 of Code of Criminal Procedure, Judgment on 7 December 2010, P 11/09.
23 See the Constitutional Court judgment concerning the individual constitutional complain by Jakub Tomczyk, rendered on 5 October 2010, SK 26/08 (73/8/A/2010).
24 M. Krzyżanowska – Mierzawska, op. cit., p. 543.
25 Ibidem, p. 544.
26 Ibidem.
27 Ibidem, p. 545, 547.
28 Ibidem, p. 545.

VIEWS OF POLISH PRACTITIONERS ON CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

As part of this project the authors interviewed and submitted written questions to a number of practitioners who have represented both the Government of Poland and individual applicants in front of the European Court of Human Rights. These discussions revealed a wide diversity of opinion regarding Poland and the ECHR. A summary of these observations is included in this section of the report.

LEGAL REPRESENTATION OF APPLICANTS BEFORE THE COURT:

There is actually a fairly large potential pool of legal practitioners who may represent individual applicants before the Court. Not only may licensed advocates and legal advisors represent individuals before the court, but also so may lawyers specializing in human rights, especially those who work for non-governmental organizations. Having in mind the number of advocates and legal advisors in Poland, this number should be impressive. However not every lawyer is prepared for such representation. In large part this is because successful representation of an Applicant requires the skills and knowledge necessary to appear in front of an international tribunal, which is substantially different from domestic court practice. Initial written pleadings are very important in the Court in order to meet the increasingly stringent admissibility criteria for a case to be heard. Representatives of applicants before the Court should also have knowledge of the judgments of the court concerning the section of the Convention that was alleged to have been violated, or have the ability to effectively research and apply the precedent case law of the Court. Unfortunately it appears that the number of truly qualified representatives working with Applicants is not currently increasing, and there remains a need for further qualified representatives. The general agreement among practitioners is that those who are experienced before the Court are in fact providing increasingly good representation but that there are still a lot of representatives who are not effective in their representation.

A review of the statistics also points out a potential problem with the quality of applications filed at the initial stage of the process. Statistics make it clear that the vast majority of applications filed with the Court against Poland are

found to be inadmissible and are struck out[29]. While many of these are probably not valid claims under the Convention system, there can be little doubt that many of them are struck out because the Applications are filed without any legal advice or assistance. The initial admissibility standards of the Court are strict, and getting stricter, and it is difficult for an applicant without legal advice to understand concepts like exhaustion of domestic remedies, the short 6-month statute of limitations, whether a claim is "manifestly ill founded" or the new requirement to show they suffered "a material harm". Greater resources are needed to assist individuals at the beginning of the application process.

POLAND'S JUDICIARY AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS:

The level of knowledge of Poland's judiciary of the law of the Convention, its protocols and the case law of the Court is sometimes difficult to determine depending on the court or the case, but the consensus is that it is not satisfactory. ECHR judgments are rarely used in Polish judges work. Several reasons are listed for why this is the case: first, it could be a reflection of the lack of proper knowledge by Polish judges on ECHR judgments, secondly, it could reflect the fact that the Polish law might set stronger standards than the Convention and judges do not feel the need to quote the provisions of the Convention, and thirdly it could reflect the fact that case law is not a traditional source of law in Poland and judges are not used to relying on and quoting previous judgments. Unfortunately Polish advocates have the impression that sometimes using their knowledge of ECHR judgments might be not proper in a Polish courtroom. (Or at least accepted as proper by the judge in the case). There is agreement that ECHR case law is accepted and applied successfully in front of the Supreme Court or the Constitutional Tribunal, but not generally the lower courts. One favorable trend is that the level of Polish judge's knowledge of ECHR judgments is increasing in part thanks to translation of the most important case law to Polish and to more public debate and knowledge about the Court's case law.

IMPLEMENTATION OF EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS IN POLAND:

Poland is attempting to systematically execute the Judgments of the European Court of Human Rights in both individual cases and through structural and legal changes. However there still remains some ongoing problems including a lack of cooperation among governmental organs responsible for applying the law, and the fact that individuals do not currently have any means to enforce a judgment. There is also a lack of special procedures that would allow supervision of the execution of the judgment in Poland by the victim in question. The third problem is connected with the wrong practice before Polish courts. We can assume that the culture of Polish lawyers and judges societies has a great impact on implementation of ECHR judgments. If judges will not apply properly general measures introduced thanks to ECHR judgments there will be a continuing risk of violation of the Convention. An example in this area concerns compensation for excessive length of proceedings. If the compensation

29 See Chart No. 4 in this report reflecting the number of judgments (about 2%) and number of cases struck out or found inadmissible.

is not adequate, the fact that we introduced compensation as a remedy in the Polish system does not have an impact for future violations. The fourth problem that could be observed with the implementation of ECHR judgments is legislation priorities and timing. Poland must react faster and make changes based on human rights provisions a greater priority.

EDUCATION AND TRAINING:

New decisions of the European Court of Human Rights are constantly being handed down which creates a truly dynamic and changing law. This leads to the challenges of continuous training for legal professionals on this changing area of the law not only for legal professionals but also for governmental employees who are governed by the law, such as for example, state correctional officers. This includes the very important need to teach individuals how to apply the law in practice in their every day work for the government. The awareness of society itself should be increased so they can be aware of the protections afforded by the Convention and the Court as average citizens currently lack knowledge about their human rights. In addition, the continuing legal education, training and apprenticeship programs of the legal professions, and the efforts of the law faculties do not do an adequate job in preparing practitioners for dealing with human rights law or the Court. Legal education needs substantial reform in this area.

LACK OF COOPERATION:

There is limited or no cooperation between the bar associations and the government on the issues of human rights and the Court. Advocates generally have the impression that the government is not interested in their work experience. And while there has been good cooperation at times between the bar associations (particularly the National Advocates Council) and non-governmental organizations like the Helsinki Foundation for Human Rights, there is still not enough coordinated training and advocacy in this area. Oftentimes cooperation is based on personalities in the institutions, and not on institutionalized relationships. This lack of cooperation has a negative impact on societies awareness and acceptance of the proceedings before the Court of Human Rights.

RECOMMENDATIONS

In light of the information gathered as part of the preparation of this report the authors believe that there are several areas where improvements can be made in order to increase Poland's responsiveness to the decisions of the Court as well as the domestic practice regarding the European Court of Human Rights.

1. Recommendations concerning the level of victim's legal representation before the European Court of Human Rights in Poland.

1.1 Human rights courses on the Convention, the Court and its jurisprudence should be obligatory courses during legal studies.

The importance of the Convention and the decisions of the Court as a (de facto) source of law in Poland should be emphasized from the beginning of legal education in a similar manner to other important sources of Polish law. In addition, law students should be taught how to work with legal precedence as a source of law in practical courses designed to give them the skills they need to apply reasoning by analogy in real cases before the domestic courts.

1.2 Apprenticeships courses concerning human rights should be taught by experts who have experience appearing before the ECHR and contain practical elements.

Legal apprenticeship trainings on the Convention and Court should concentrate on the practical application of the law to the everyday work of the appropriate legal profession. Currently only the bar in Warsaw, largely because of close cooperation with the Human Rights Commission in the National Advocates Council, provides an adequate number of hours of training on the Court with qualified specialists. Some bars provide courses concentrated only on Convention provisions. These courses should be more detailed. Eu-

ropean Union law is given much more attention, even though victims of human rights violations currently are choosing the ECHR to fight for their rights. More attention should be given to ECHR case law, as the number of Polish cases is still quite high.

1.3 Lawyer apprentices who would like to specialize in representing victims before the court should have a structured chance during apprenticeship to appear before the Court and assist with Applications.

This would not only prepare future qualified representatives before the Court but would increase the access to quality representation afforded to applicants to the Court from Poland.

1.4 The bar association and human rights non-governmental organizations should consider providing increased legal assistance for individuals at the application stage of the proceedings before the Court.

Individuals who believe their rights have been violated and the system of dealing with those potential violations would benefit greatly from legal assistance in preparing and filing initial applications to the Court. First, many inappropriate applications could be avoided by educating potential applicants about the propriety of their claim, and secondly, the quality of the Applications that are filed would be greatly increased. This type of service could work well using the legal clinic education model as long as there is experienced and diligent supervision of the students.

2. Recommendations concerning the level of knowledge of ECHR judgments, the Convention and its Protocols by judiciary.

2.1 Training for judges on the Convention and Court should be provided throughout their legal and professional education.

One of the primary goals of emphasizing the importance of the Convention and Court decisions to Polish judges throughout the legal education process is to fight the mistaken belief that the decisions of the Court are not a source of Polish law.

2.2 The number of hours for trainings on the Convention and the Court should be increased.

Presently in the State Judicial and Prosecutorial School there are 4 hours of lecture (case method) concerning human rights in proceedings before the ECHR and one group class of 1.5 hours. This amount of time is inadequate to accurately prepare judges and prosecutors to prepare to apply the law of the Convention to their work in any meaningful way. In addition, this limited

exposure to the Court's jurisprudence indicates the lack of emphasis and importance that the system gives to this area of the law, which is a bad lesson that the apprentices take with them into practice.

2.3 Systematic, well-planned, continuing legal education should be provided for judges and prosecutors to update them to developments in the jurisprudence of the Court relevant to their practice.

The government in conjunction with ministries and institutions and where possible the non-governmental human rights communities and the bar associations has an obligation to make sure that judges and prosecutors are up to date on changes in the law. One crucial area where this is necessary is in the area of human rights law involving the Convention and the Court. This training should be a systematic, regularized and mandatory component of judges and prosecutors continuing legal and professional education and qualification.

3. Recommendations on how Poland responds to cases before the European Court of Human Rights.

3.1 Polish law should be monitored for compatibility with the Convention and Court decisions in a similar manner to the review of Polish laws to the requirements of the European Union.

The best method of dealing with human rights violations is to work toward preventing them from happening in the first place. When Poland can identify and prevent these violations from happening at all, the benefits to Poland and its citizens are great. The current system of constitutional application is not enough as it is rarely used to challenge the compatibility of Polish law with the European Convention, and because it presents a post harm remedy. Prevention should be the goal in analyzing the reform of laws that violate the Convention as it is with European Union law practices.

3.2 Greater emphasis should be placed on decisions where Poland is not a state party as a source of law and practice.

Future violations of the Convention and therefore future cases against Poland can be eliminated by a realization that jurisdiction ratione loci and ratione personae of the Convention is changing. Potential violations in Poland based on similar violations in other Convention countries should be identified and responded to as a part of the ongoing monitoring of Polish law's compatibility with the Convention.

3.3 The Government's Program and Policies on execution of judgments should set legislative priorities, and where appropriate receive fast track consideration.

According to the Committee of Ministers of the Council of Europe, Polish actions in response to the execution of judgments take too long. Changes mandated by the Convention should receive legislative and political priority and consideration should be given to non-legislative steps that can immediately be taken to address identified shortcomings.

3.4 The Government should immediately and appropriately react to judgments of the Court, and where appropriate plan in advance for how to deal with adverse decisions.

The Government should react for judgments immediately after the judgment is given. As there are usually three areas of every judgment: compensation, general measures and individual measures, the judgments should be grouped and different workgroups should formed to deal with each of the three individual areas. It would make the execution of judgments much faster. Initial grouping of cases and plans for changes could be performed as early as when the case is communicated to the Government, which will give the government more time to take the best steps to deal with the execution of judgments.

4. Recommendations concerning cooperation between bodies interested in the application of ECHR standards.

4.1 The Ministry of Foreign Affairs should institutionalize cooperation with the bar and non-governmental organizations in a similar manner as they have with other government departments.

Human rights non-governmental organizations are close to society through their working on a daily basis with those who have had their human rights violated by government organs. This experience would be invaluable to the Government in preventing human rights violations, educating society and professionals on the Convention and Court, responding to cases before the court, and in implementing decisions of the Court. Greater cooperation with the bar would ease some of the problems that might be encountered in cases before the Court. Such cooperation would increase the quality of information given to the society as to proceedings before the ECHR and its results. Such unified effort and information could result in using other measures in the domestic system to reach justice. In part this may address the present lack of general trust toward the Polish judicial system in Polish society.

4.2 A program of greater cooperation should be developed between Polish law schools, apprenticeship programs, non-governmental organizations and bar associations with the Government to work together to develop curriculum and training on the Convention and the Court.

The Government has limited resources for training and education on the Convention and the Court. The ministries of Justice and Foreign Affairs should take advantage of the resources and interests presented by these other institutions by cooperating in an organized fashion to develop curriculum, design trainings and provide continuing legal education in a relevant and professional manner.

4.3 The practice for dissemination of information about the results of cases before the Court should be examined and a more unified system adopted.

Potential applicants before the Court have considerable information on how to apply to the Court but limited information on execution of judgments or the results of the execution of judgments. Even lawyers have problems establishing changes that have occurred as a result of Court decisions. The Government, in conjunction with the bar and non-governmental human rights organizations should consider further jointly developing internet and other public education resources for the public, academics, lawyers, judges and prosecutors on the Convention, Court decisions and Polish enforcement of judgments and compliance with human rights law.

4.4 Bar associations, human rights non-governmental organizations and individual representatives in cases before the Court should improve their cooperation and resource sharing.

Although in practice there exists an active group of advocates, legal advisors, academics and representatives of NGO's involved in ECHR cases in Poland there is very little coordination or cooperation among them. The development of a "human rights bar" of those who specialize in these cases could be very beneficial for all involved. First, it would allow the practitioners to pool resources and experience and share ideas on pending cases, as well as allow formal or informal mentorships for representatives new to this area of practice. It would also facilitate additional training for these representatives by their cooperation, unite them as a force for change in relation to the Government when necessary, and give the government a more organized group of individuals to engage with. This group could be a powerful force for change both inside and outside the Courtroom in the area of human rights.

REKOMENDACJE

Mając na uwadze zebrane informacje, podczas przygotowania raportu, autorzy pragną zwrócić uwagę na kilka ważnych obszarów. Wymagają one pewnego udoskonalenia w celu podniesienia efektywności odpowiedzi rządu polskiego na wyroki Trybunału, jak również krajowej praktyki w odniesieniu do orzecznictwa Europejskiego Trybunału Praw Człowieka.

1. Rekomendacje dotyczące poziomu prawnej reprezentacji pokrzywdzonych przed Europejskim Trybunałem Praw Człowieka.

1.1 Zajęcia z zakresu praw człowieka zawartych w Konwencji, dotyczące Trybunału i orzecznictwa powinny być zajęciami obowiązkowymi podczas studiów prawniczych.

Znaczenie Europejskiej Konwencji i wyroków Trybunału jako (istotnego w praktyce) źródła prawa w Polsce powinny być podkreślane od początku prawniczej edukacji, w porównywalnym zakresie do innych źródeł polskiego prawa. Co więcej, studenci prawa powinni być przygotowywani do stosowania precedensów prawnych jako źródła prawa, podczas kursów praktycznych, stworzonych w celu nabycia niezbędnych umiejętności do rozumowania poprzez analogię w rzeczywistych sprawach przed sądami krajowymi.

1.2 Kursy z zakresu praw człowieka na aplikacjach prawniczych powinny być prowadzone przez ekspertów, którzy mają doświadczenie w udziale w postępowaniu przed Europejskim Trybunałem i powinny zawierać praktyczne informacje.

Kursy podczas aplikacji prawniczych dotyczące Konwencji i Trybunału, powinny się koncentrować na praktycznym stosowaniu prawa we właściwymi codziennym wykonywaniu profesji prawniczych. Obecnie tylko Izba Adwokacka w Warszawie, przede wszystkich dlatego, że blisko współpracuje w Komisją

Praw Człowieka Naczelnej Rady Adwokackiej, zapewnia właściwą liczbę godzin szkoleń dotyczących Trybunału, z wykwalifikowanymi specjalistami. Te kursy powinny być bardziej szczegółowe. Zdecydowanie więcej uwagi poświęca się prawu Unii Europejskiej, choć ofiary naruszeń praw człowieka obecnie wybierają ETPCz, aby walczyć o swoje prawa. Więcej uwagi powinno się poświęcić na przedstawienie orzecznictwa Trybunału, z uwagi na nadal dość wysoką liczbę polskich spraw.

1.3 Prawnicy, którzy pragną specjalizować się w reprezentowaniu pokrzywdzonych przed Trybunałem, powinni mieć sposobność w ramach aplikacji do występowania przed Trybunałem i asystować przy przygotowywaniu skarg.

Dzięki temu nie tylko umożliwiono by przygotowanie prawników do występowania przed Trybunałem, ale także zwiększyłoby to dostęp do właściwej reprezentacji, jaka należy się skarżącym z Polski przed Trybunałem.

1.4 Izby adwokackie i organizacje pozarządowe zajmujące się prawami człowieka powinny rozważyć możliwość zapewnienia jednostkom pomocy prawnej na etapie sporządzania skargi do Trybunału.

Osoby, które twierdzą, że ich prawa zostały naruszone, sądzą, że system zajmujący się tymi potencjalnymi naruszeniami zyskałby wiele dzięki pomocy prawnej w przygotowaniu i złożeniu skarg to Trybunału. Po pierwsze, można by zapobiec wielu niedopuszczalnym skargom, ucząc potencjalnych skarżących o poprawności skargi, po drugie, wzrosłaby jakość złożonych skarg. Ten rodzaj pomocy mógłby działać dobrze w ramach modelu edukacyjnego, jakim jest klinika prawa, o ile zapewniona będzie doświadczona pomoc i nadzór nad studentami.

2. Rekomendacje dotyczące poziomu znajomości orzecznictwa ETPCz, postanowień Europejskiej Konwencji i jej protokołów przez sędziów.

2.1 Szkolenia dla sędziów na temat postanowień Konwencji i Trybunału powinny być zapewnione przez całą ich prawną i zawodową edukację.

Jednym z głównych celów podkreślania wagi Europejskiej Konwencji i wyroków Trybunału dla polskich sędziów podczas ich edukacji prawniczej jest zwalczanie błędnego przekonania, że wyroki Trybunału nie są źródłem prawa w Polsce.

2.2 Liczba godzin szkoleń dotyczących postanowień Konwencji i Trybunału powinna wzrosnąć.

Obecnie w Krajowej Szkole Sądownictwa i Prokuratury przewidziano 4 godziny wykładu (case metod) dotyczące praw człowieka w postępowaniu

przed ETPCz i 1,5 godziny ćwiczeń. Taka liczba godzin jest nieodpowiednia, aby we właściwy sposób przygotować sędziów i prokuratorów do stosowania Konwencji podczas ich pracy w znaczący sposób. Dodatkowo, ograniczona prezentacja orzecznictwa Trybunału wskazuje na brak nacisku i podkreślenia wagi tego systemu, co stanowi zły przykład dla aplikantów pracujących z sędziami.

2.3 Systematyczne, dobrze zaplanowane i ustawiczne szkolenie prawnicze powinno być zapewnione dla sędziów i prokuratorów, w celu zapoznania ich z nowymi rozwiązaniami w orzecznictwie Trybunału związanymi z ich pracą.

Rząd we współpracy z ministerstwami i instytucjami oraz - gdzie jest to możliwe - z organizacjami pozarządowymi zajmującymi się prawami człowieka a także z izbami adwokackimi mają obowiązek upewnienia się, że sędziowie i prokuratorzy są na znają bieżące zmiany w prawie. Jednym z ważnym obszarów, gdzie jest to niezbędne jest obszar praw człowieka dotyczący Konwencji i Trybunału. Takie szkolenia powinny być systematycznym, regularnym i obowiązkowym elementem ustawicznej edukacji prawniczej i zawodowej sędziów i prokuratorów.

3. Rekomendacje dotyczące odpowiedzi strony polskiej na sprawy sprzed Europejskiego Trybunału Praw Człowieka

3.1 Prawo polskie powinno być monitorowane co do zgodności z postanowieniami Konwencji i wyrokami Trybunału, w podobny sposób jak ma to miejsce w odniesieniu do prawa Unii Europejskiej.

Najlepszą metodą zajmowania się naruszeniami praw człowieka jest przede wszystkim zapobieganie im. Jeśli rząd polski może zauważyć takie naruszenia i im zapobiec, korzyści dla Polski i jej obywateli są ogromne. Obecny system skargi konstytucyjnej jest niewystarczający, gdyż rzadko jest używany w celu kontroli zgodności polskiego prawa z Europejską Konwencją oraz dlatego, że skarga jest środkiem wykorzystywanym post facto. Zapobieganie naruszeniom powinno stanowić główny cel podczas analizowania reformy prawa, które narusza Konwencję, podobnie jak ma to miejsce z praktyką w odniesieniu do prawa Unii Europejskiej.

3.2 Większy nacisk powinien być położony na wyroki Trybunału, w sprawach w których Polska nie jest stroną postępowania, jako źródło dla naszej krajowej praktyki.

Przyszłe naruszenia Konwencji, a w konsekwencji przyszłe sprawy przeciwko Polsce mogą zostać wyeliminowane, przez uświadomienie, że jurysdykcja ratione loci i ratione personae Konwencji zmienia się. Potencjalne naruszenia

Konwencji w Polsce, dotyczące podobnych naruszeń w innych państwach, powinny zostać zauważone i wyeliminowane w ramach ciągłego programu monitorowania zgodności prawa polskiego z Konwencją.

3.3 Program Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka powinien opierać się na priorytetach legislacyjnych, a tam gdzie jest to odpowiednie na szybkich decyzjach.

Komitetów Ministrów Rady Europy uznał, że polskie działania w odpowiedzi na wykonywania wyroków trwają zbyt długo. Zmiany wymuszone przez Konwencję powinny stanowić legislacyjny i polityczny priorytet, a także powinno podjąć się rozważania dotyczące nielegislacyjnych środków, które mogą zostać podjęte natychmiast, w celu oddziaływania na stwierdzone naruszenia.

3.4 Rząd powinien natychmiast i w odpowiedni sposób reagować na wyroki Trybunału, a tam gdzie jest to niezbędne planować na przyszłość, jak zajmować się niekorzystnymi wyrokami.

Rząd powinien reagować natychmiast na wydany wyrok. Z uwagi na fakt, że zazwyczaj środkiem naprawczym orzeczonym w wyroku jest: odszkodowanie, środek generalny lub indywidualny, wyroki powinny zostać pogrupowane i inne grupy robocze powinny zostać utworzone, w celu zajęcia się poszczególnymi rodzajami środków naprawczych. Uczyniłoby to system wykonywania wyroków znacznie szybszym. Wstępne grupowanie spraw i przygotowywanie planów postępowania ze zmianami jakie ze sobą niosą, powinno mieć miejsce już na etapie, gdy sprawa została zakomunikowana rządowi, co pozwoli na właściwą reakcję rządu na naruszenie w odpowiednim czasie.

4. Rekomendacje dotyczące współpracy organów zainteresowanych stosowaniem standardów ETPCz.

4.1 Ministerstwo Spraw Zagranicznych powinno zinstytucjonalizować współpracę między izbami adwokackim, izbami radców prawnych i organizacjami pozarządowymi, w podobny sposób jak ma to miejsce w przypadku innych organów rządowych.

Organizacje pozarządowe są blisko społeczeństwa przez swoją pracę z osobami, których prawa zostały naruszone. Ich doświadczenie byłoby nieocenione dla rządu w zapobieganiu naruszeniom praw człowieka, edukacji społeczeństwa i praktyków na temat Konwencji jak i Trybunału, odpowiadaniu na skargi przed Trybunałem i w wykonywaniu jego wyroków. Większa współpraca z izbami mogłaby załagodzić niektóre z problemów, jakie są spotykane w sprawach przed Trybunałem. Taka współpraca podniosłaby poziom informacji przekazywanej społeczeństwu na temat postępowań przed Trybunałem

i naruszeń Konwencji. Taka współpraca mogłaby przyczynić się do stosowania innych środków w systemie krajowym w celu osiągnięcie sprawiedliwości. Częściowo mogłoby to podnieść poziom zaufania polskiego społeczeństwa wobec polskiego wymiaru sprawiedliwości.

4.2 Program większej współpracy powinien zostać podjęty między wydziałami prawa, aplikacjami, organizacjami pozarządowymi, izbami prawniczymi z rządem, w celu wypracowania programu nauczania i szkolenia na temat Konwencji i Trybunału.

Rząd ma ograniczone środki dla prowadzenie szkoleń i edukacji na temat Konwencji i Trybunału. Ministerstwo Sprawiedliwości i Spraw Zagranicznych powinny czerpać korzyści ze środków prezentowanych przez inne instytucje, przez współpracę w zorganizowany sposób, w celu wypracowania rozwiniętego programu nauczania, skierowanego na szkolenia i ustawiczną prawniczą edukację w odpowiedni i profesjonalny sposób.

4.3 System rozpowszechniania informacji na temat wyroków Trybunału powinien opierać się na bardziej ujednoliconym systemie.

Potencjalni skarżący mają dostęp do informacji na temat sposobu składania skarg do Trybunału, jednak dostęp do informacji na temat wykonywania wyroków jest ograniczony. Nawet prawnicy mają trudności z ustaleniem jakie zmiany nastąpiły w skutek wyroków Trybunału. Rząd, we współpracy z izbami prawniczymi i organizacjami pozarządowymi zajmującymi się prawami człowieka powinien rozważyć utworzenie wspólnego źródła internetowego i innych środków edukacji prawniczej dla społeczeństwa, nauczycieli akademickich, prawników, sędziów i prokuratorów, na temat Konwencji i wyroków Trybunału, zgodności polskiego prawa z prawami człowieka i wykonywania wyroków.

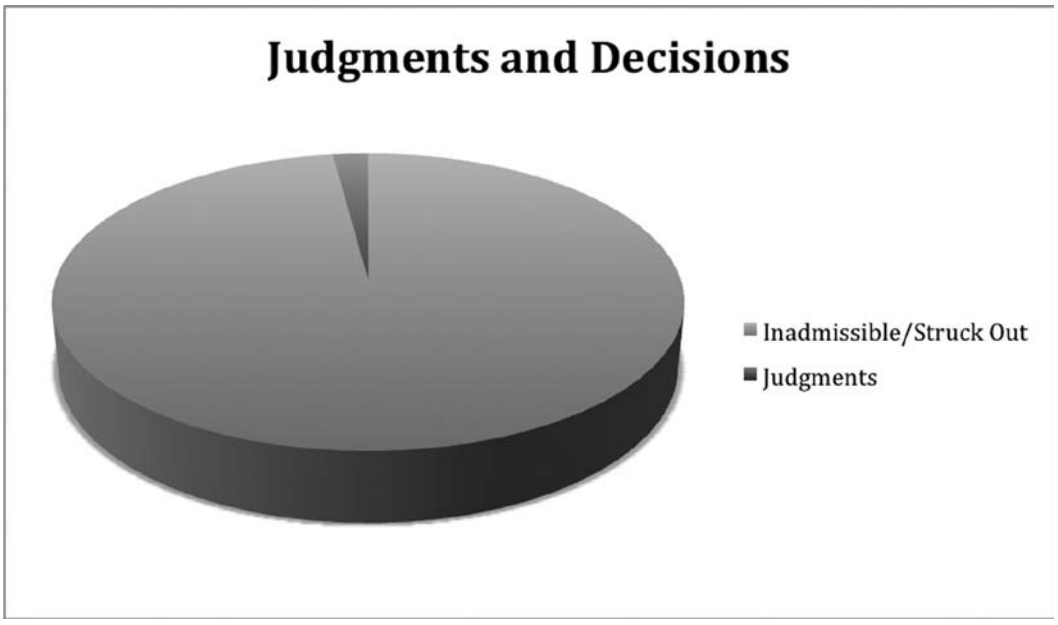
4.4 Izby prawnicze, organizacje pozarządowe zajmujące się prawami człowieka i występujący przed Trybunałem w imieniu skarżących powinni wzmocnić współpracę i wymianę doświadczeń.

Choć w praktyce istnienie grupa adwokatów, radców prawnych, nauczycieli akademickich i przedstawicieli NGO zajmujących się polskimi sprawami przed ETPCz, należy zauważyć, że działania te nie są koordynowane i jest niewielka współpraca. Utworzenie grupy zajmującej się prawami człowieka, przez osoby specjalizujące się w takich sprawach może być bardzo korzystne dla nich. Po pierwsze, umożliwiłoby to praktykom gromadzenie środków i wymianę doświadczenia na temat bieżących spraw przed Trybunałem, jak również pozwoliłoby na formalne i nieformalne nadzorowanie działań podjętych przez osoby, które dopiero rozpoczynają praktykę w tym zakresie. Umożliwiłoby

to także dodatkowe szkolenia dla osób rozpoczynających praktykę w tym zakresie przez współpracę, wspólne występowanie wobec rządu, tam gdzie jest to konieczne oraz ułatwiłoby to dialog rządu z taką zorganizowaną grupą. Taka grupa mogłaby okazać się szczególne korzystna w celu przeprowadzenia zmian dotyczących praw człowieka zarówno w pracy prawników jak i poza nią.

CHARTS

CHART 1: POLAND JUDGMENTS AND DECISIONS TO 01/01/2009



Applications inadmissible/ struck out – 30,034 (98%)
Judgments 634 (2%)

CHART 2: POLAND TYPE OF JUDGMENTS AS OF 01/01/2009

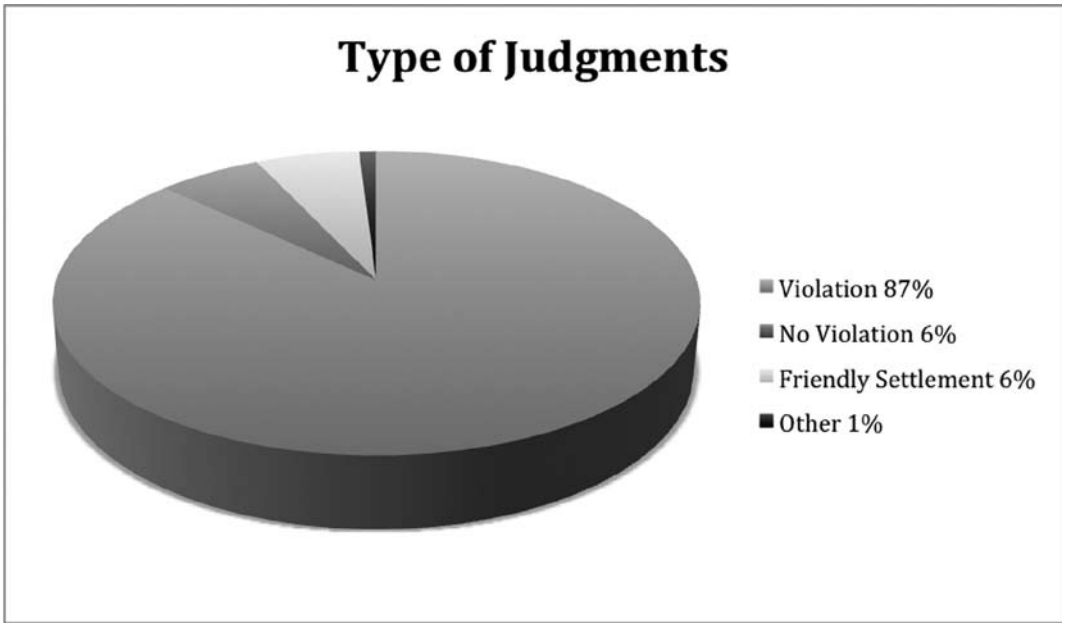


CHART 3: SUBJECT MATTER OF VIOLATION JUDGMENTS – AS OF 01/01/2009

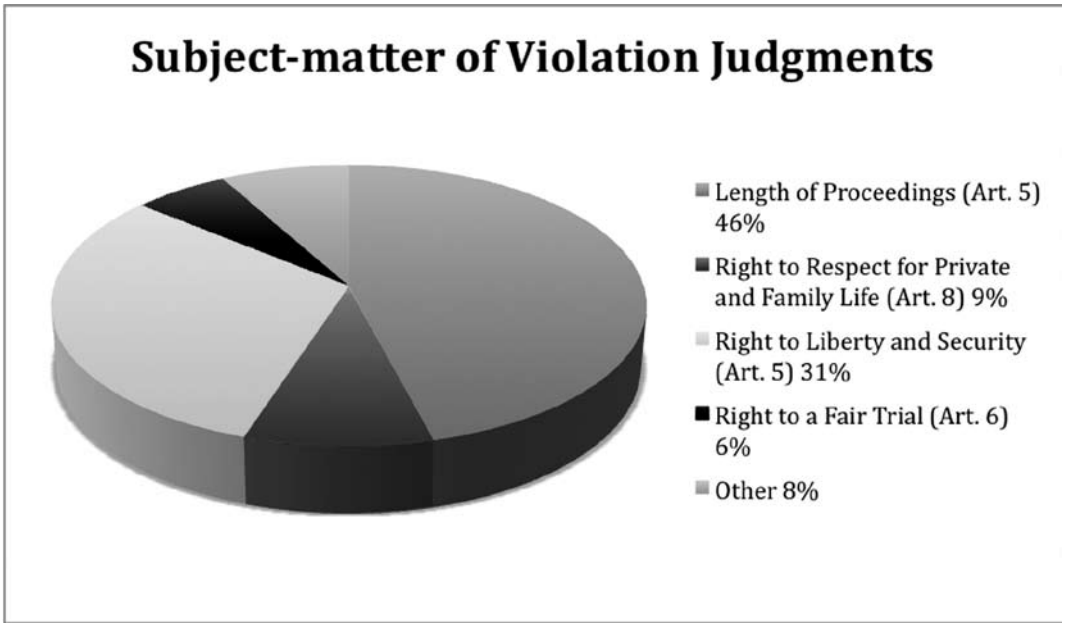
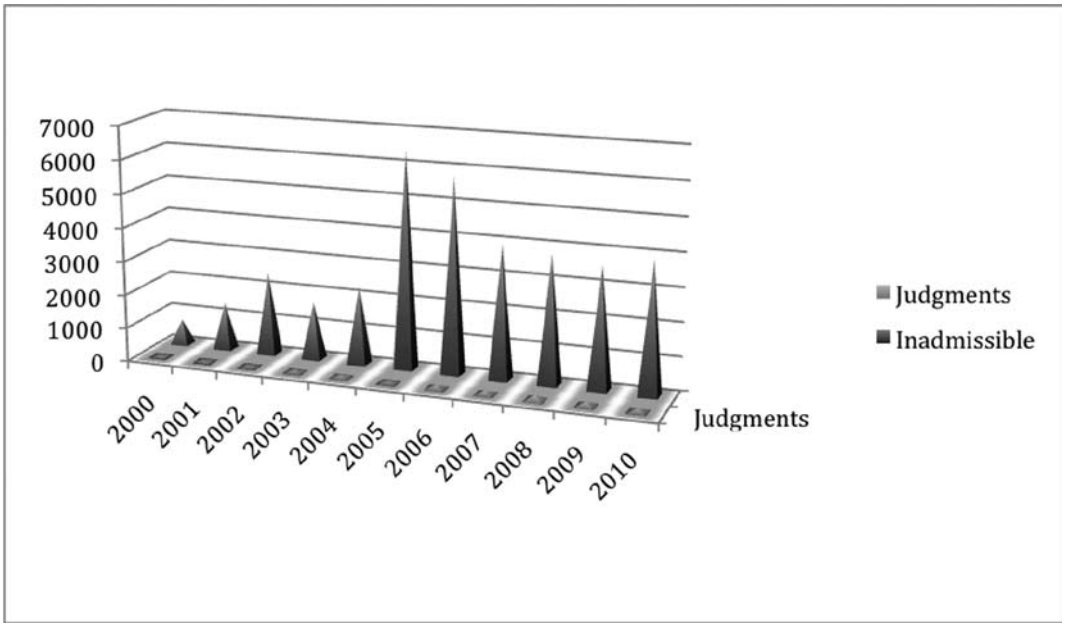


CHART 4: DECISIONS AND JUDGMENTS - POLAND



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Judgments	19	20	25	67	79	49	115	111	141	134	108
Inadmissible	741	1411	2469	1703	2344	6465	5816	3966	3825	3635	3924

CHART 5: POLAND CASELOAD BY STAGE OF PROCEEDINGS AS OF 12/31/10[30]

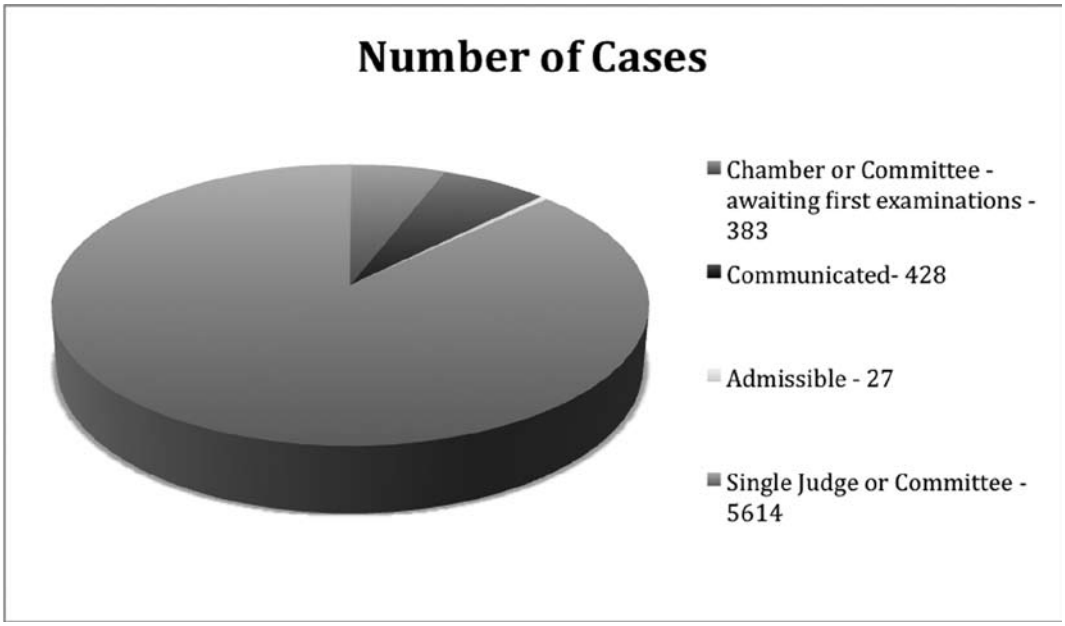
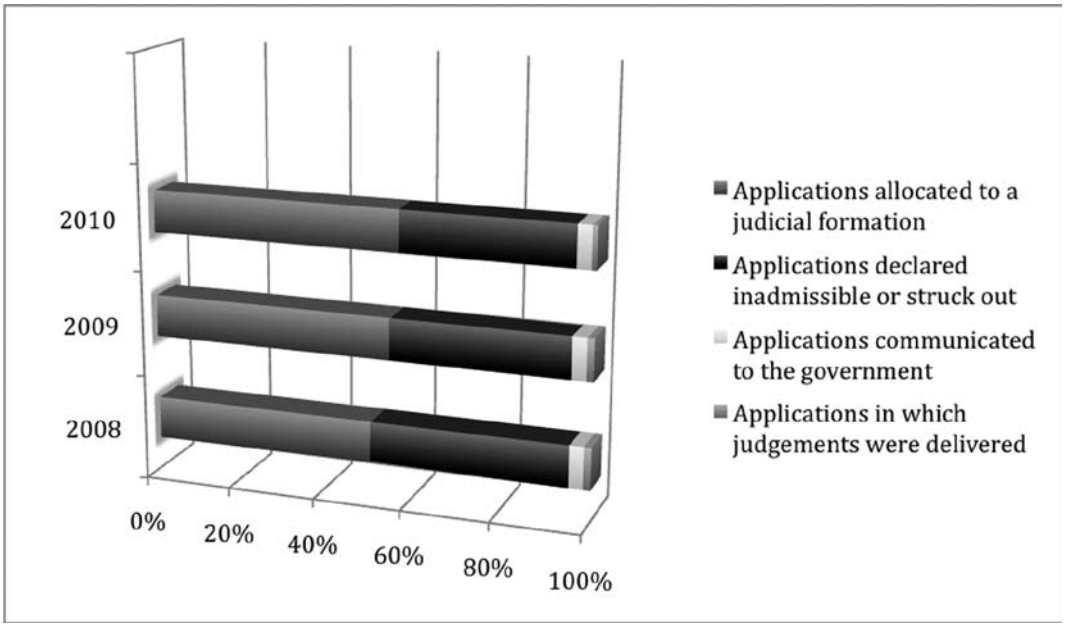


CHART 6: POLAND MAJOR PROCEDURAL STEPS IN PROCESSING APPLICATIONS



30 All statistics from the Registar of the European Court of Human Rights or the Council of Ministers of the Council of Europe.

CHART 7: CASES PENDING BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS – APPLICATIONS PENDING ON DECEMBER 31, 2010

No.	State	Number of Pending Applications	Percentage of Total
1	Russian Federation	40300	28.9
2	Turkey	15,200	10.9
3	Romania	11,950	8.6
4	Ukraine	10,450	7.5
5	Italy	10,200	7.3
6	Poland	6,450	4.6
7	Moldova	3,850	2.8
8	Serbia	3,500	2.5
9	Bulgaria	3,450	2.5
10	Slovenia	3,450	2.5
Other	Remaining 37 States	30,850	22.1
Total		139,650	100

CHART 8: APPLICATIONS ALLOCATED BY POPUATION (10,000) 2008-2010

State	**2008**	**2009**	**2010**
Russian Federation	0.71	0.96	1.01
Turkey	0.53	0.63	0.80
Romania	2.43	2.45	2.79
Italy	0.31	0.60	0.64
Ukraine	1.03	1.02	0.87
Poland	1.15	1.31	1.51

CHART 9: PRINCIPLE AREAS OF VIOLATION IN RECENT POLISH CASES

Number of Judgments	Judgments finding at least one violation
In 2010 – 107	87
In 2009 – 133	123
In 2008 – 141	129

	Art. 6 Length of Proceedings	Art. 6 Right to a Fair Trial	Art. 5 Right to Liberty and Security	Art. 8 Right to Respect Private and Family Life
# of Judgments 2010	37	20	14	12
# of Judgments 2009	50	21	35	12
# of Judgments 2008	63	9	47	17

CHART 10: POLISH CASE LAW FROM 1/01/2000 TO 5/31/2011 BASED ON IMPORTANCE OF THE DECISION

HIGH IMPORTANCE: Judgments that the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.

MEDIUM IMPORTANCE: Judgments that do not make a significant contribution to the case law but nevertheless do not merely apply existing case law.

LOW IMPORTANCE: Judgments with little legal interest - those applying existing case law, friendly settlements and striking out judgments (unless these have any particular point of interest).

ABOUT THE AUTHORS

Delaine Swenson is an American lawyer and law professor with over 25 years of experience in training and the law. He presently serves as the Department Head of the Chair of International and American Law at the Faculty of Law of John Paul II Catholic University of Lublin and serves as the Director and was the founder of the Center for Advancing Legal Skills. He is also a Founder and is currently Chair of the Founders Council of the Rule of Law Institute Foundation. Delaine Swenson has over 10 years experience as a trial lawyer in the state and federal courts of the United States, and was the Young Lawyer of the Year in the State of Washington in 1993. Professor Swenson has previously worked on legal reform projects as the Regional Director for Central Asia for the American Bar Association. He currently represents two clients in front of the European Court of Human Rights.

Anna Szarek is an Associate Professor in the Department of International and American Law at the Faculty of Law, Canon Law and Administration of John Paul II Catholic University of Lublin. She is a graduate of the Faculty of Law at the Catholic University of Lublin in 1999 (M.A. in Law). Since 2007 holds Ph.D. in law from Catholic University of Lublin on the dissertation topic of *The Controlling Functions of the Treaty Bodies in the UN Human Rights System*. Current scholarly interest: treaty law and practice, human rights protection and diplomatic law. Cooperates with Ministry of Foreign Affairs of Poland and with Helsinki Foundation.

Kinga Stasiak is an Assistant Professor in International and American Law Chair, at John Paul II Catholic University of Lublin. Graduate of Faculty of Law at the Catholic University of Lublin in 2005. Holds Ph.D. in law from Catholic University in Lublin in 2010, on the dissertation topic of „Internationalized criminal tribunals in international criminal law system". The dissertation was prepared with scholarship from Ministry of Science and Higher Education. In 2008 she was participating in Marie Curie Programme in Campus den Haag and in research in Peace Palace Library. Currently she is Socrates Erasmus Student Exchange Law Faculty Coordinator (from 2006) and she is coaching students for international moot courts. She teaches international law as well as international criminal law.

THE RULE OF LAW INSTITUTE

The Rule of Law Institute is an independent non-profit NGO established by Polish and American Lawyers in 2001. It is located in Lublin, the largest city of Eastern Poland, and the gateway to the European Union from the east. RLI is active in promoting clinical legal education (Our student volunteers are supervised by practicing lawyers. Over ten years of existence we have trained over 400 law students, giving them skills they need in their professional life). RLI combines a number of lawyers representing different specialties both from Academia and Practice. In 2011 RLI employed over 25 lawyers in its Legal Aid, Migration and Refugee Programs, which makes us one of the biggest pro bono legal aid providers in Poland. The Institute is funded by various institutions and individuals. Principal sponsors have included: The European Union, The Polish Government, United Nations Development Program, UNHCR, Trust for Civil Society in Central and East Europe, Batory Foundation, Pennsylvania Bar Association, USAID, and the Polish American Freedom Foundation.

The Rule of Law Institute's mission is to promote the development of the rule of law in Poland, and through Poland's example in other transitional countries. The rule of law is a cornerstone of the development of a society based on respect for individuals, protection of human rights and a free and democratic society.

The RLI seeks to strengthen the rule of law through training; public awareness campaigns; provision of technical assistance; development and implementation of innovative programs and undertaking active partnership with legal professionals, non-governmental organizations, appropriate organs of government and international organizations with similar goals.

THE INSTITUTE'S RULE OF LAW EFFORTS FOCUS ON 10 KEY OBJECTIVES:

1. Promoting legal standards based on the rule of law.
2. Increasing the public's legal knowledge.
3. Increasing the professional skills of lawyers.
4. Promoting the European Union and the idea of the European integration process.
5. Protecting civil and human rights.
6. Promoting the Polish experience in political system transition within post-communist countries.
7. Supporting the education system in the area of promoting the rule of law.
8. Reform of the system of legal education.
9. Eliminating corruption from public life.
10. Supporting initiatives for strengthening judicial independence.

THE MAIN PROGRAMS AND ACTIVITIES OF THE RULE OF LAW INSTITUTE ARE:

1. **Legal Aid Program.** The Institute operates the Ewelina Milczanowska Legal Aid Center where since 2006 indigent persons may take advantage of pro bono legal aid provided by law students and lawyers using the clinical legal education model. Every year about 1200 clients take advantage of the legal aid center. In 2010 the RLI opened branch offices providing legal aid in Krasnystaw, Świdnik and Kraśnik.

2. **The Migration Program**. In this program RLI lawyers provide individual pro bono legal aid (in Russian, English and Polish) to foreigners, who are staying at the territory of Poland or at the territory of country of origin but planning to come to Poland. The program also provides institutional support for the organizations providing assistance of this kind by organizing trainings, seminars, preparing publications and newsletters and creating a website. In this program the **Migration Library** has been created – which at the moment consists of over 430 migration related publications housed at the RLI headquarters.

3. **The Refugee Program**. In this program RLI lawyers assist refugees in receiving asylum in Poland and with their legal challenges. Over 800 clients a year receive legal representation from RLI lawyers and law students.

4. **The Think – Tank Program.** The RLI undertakes monitoring, research, analysis, reporting and recommendation functions concerning public affairs, reform of the legal system and in the area of comparative studies. RLI supports the reform of the legal education system which aims at promoting ethical standards and the professional responsibility of lawyers.

5. **Training.** RLI runs extensive professional training programs for legal professionals using interactive teaching methodologies in conjunction with our partner organizations.

6. **International Development.** RLI participates as principal and partner in a number of international development programs in Europe, Asia and Africa, bringing Poland's experience with development of rule of law to other countries.

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