

Warsaw, 23<sup>rd</sup> August 2021

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**To:**  
**The Secretary of the Committee of Ministers**  
**Council of Europe**  
Avenue de l'Europe  
F-67075 Strasbourg Cedex

**UPDATED COMMUNICATION FROM THE HELSINKI FOUNDATION FOR  
HUMAN RIGHTS**

**CONCERNING**

**EXECUTION OF ECtHR JUDGMENT IN CASE *BURŻA AGAINST POLAND*  
APPLICATION NO. 15333/16**

**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

## **I. Introduction**

1. The Helsinki Foundation for Human Rights ("HFHR") respectfully presents its updated communication of 21 August 2019 ("Communication of 21 August 2019") on the execution of the judgment of the European Court of Human Rights ("ECtHR", "Court") of 18 October 2018 in the case *Burza v. Poland*(application no. 15333/16). We also submit this updated position in reference to the government's Updated Action Report of 23 June 2021.
2. In this update, the HFHR would like to refer to the statistics provided by the government in the updated action report, thus updating the statistics presented in the communication of 21 August 2019.
3. At the same time, the HFHR would like to emphasize that it fully supports all claims and conclusions indicated in its communication of 21 August 2019.

## **II. Statistical data**

4. In paragraph II.1. of the Updated Action Report 1 of 23 June 2021, the Polish Government presented statistical data on the number of requests for the application of pre-trial detention filed by prosecutors, the number of cases in which pre-trial detention was imposed by district courts, the number of cases in which pre-trial detention was imposed by district and regional courts, and the number of persons placed in pre-trial detention by district and regional courts for more than 2 years in 2019 as compared to 2018. According to the HFHR, the statistical data presented by the government do not fully reflect the current problems related to the application of pre-trial detention in Poland. However, the analysis of these data alone shows that we are seeing an upward trend in the application of this preventive measure.
5. Bearing the above in mind, we present below statistical data for the years 2015-2020 concerning, among other things, the number of persons in pre-trial detention, the number of prosecutorial requests for the application of this preventive measure, and the duration of pre-trial detention.

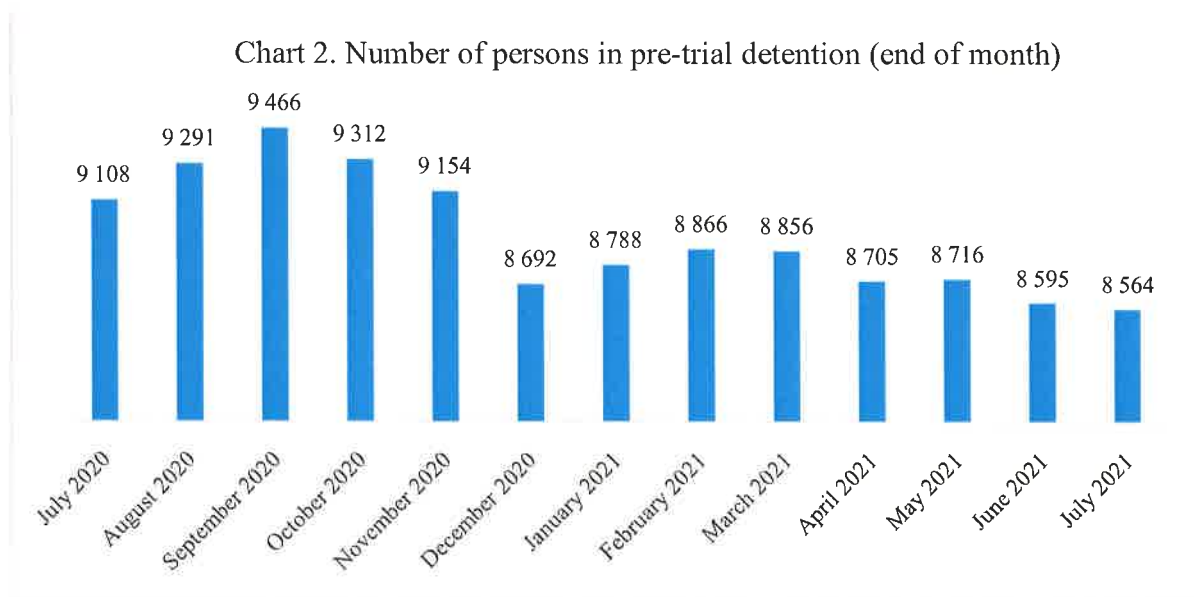
**a) Number of persons in pre-trial detention**

Chart 1. Number of persons in pre-trial detention as of 31 December of a given year



6. In order to fully assess the practice of the application of pre-trial detention in Poland, one should first consider the number of persons held in pre-trial detention. As the above chart shows, at the end of 2015, 4,162 persons were held in pre-trial detention, and in 2020 the figure was 8,692. This means a more than double increase. The increase in the number of persons held in pre-trial detention was consistent. However, the greatest increase – by nearly 2,000 – was recorded in 2017.

Chart 2. Number of persons in pre-trial detention (end of month)



<sup>1</sup> The chart is based on statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka> (accessed on 23-08-2021).

7. We have observed some deviations from the trend presented above over the last year. Between July and September 2020, the number of persons in pre-trial detention rose to 9,466. Then, between October and December 2020, there was a significant decrease in the number of persons on whom this most severe preventive measure was imposed (by almost 800).
8. However, since December 2020 the number of persons in pre-trial detention has been constantly fluctuating and it is not possible to show a uniform trend. Still, currently more than 8,500 persons are held in remand centres, which should be a matter of great concern. It is worth noting that this number is still higher than the number of persons who were detained on remand at the time the ECtHR's judgment in the case of *Burza v. Poland* was issued, as well as at the time of filing the application by the applicant.

| <b>Year<sup>3</sup></b> | <b>Number of persons in pre-trial detention as of 31 December</b> | <b>Population of inmates of prisons and detention centres as of 31 December</b> | <b>Percentage share of pre-trial detainees in the general population of penitentiary institutions</b> |
|-------------------------|---|---|---|
| <b>2015</b>             | 4,162   | 70,836  | 5.9%  |
| <b>2016</b>             | 5,396   | 71,528  | 7.5%  |
| <b>2017</b>             | 7,239   | 73,822  | 9.8%  |
| <b>2018</b>             | 7,360   | 72,204  | 10.2%   |
| <b>2019</b>             | 8,520   | 74,130  | 11.5%   |
| <b>2020</b>             | 8,692   | 67,894  | 12.8%   |
| <b>07.31.2021</b>       | 8,564   | 62,516  | 13.7%   |

9. Another measure that illustrates the problem of excessive use of pre-trial detention in Poland is the ratio of the number of persons detained on remand in Poland to the total population held in Polish penitentiary facilities. Between 2015 and 2020, the ratio of persons in pre-trial detention to the total population incarcerated in prisons/remand

<sup>2</sup> The chart is based on statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka> (accessed on 23-08-2021).

<sup>3</sup> The table is based on statistics published by the Prison Service at <https://www.sw.gov.pl/strona/statystyka-roczna> (accessed on 23-08-2021).

centres increased from 5.9% to 12.8%, which means a more than 100% increase. It is also worth noting that between 2019 and 2020, the population of persons in penitentiary facilities decreased by over 6,000, and the number of persons in pre-trial detention increased by over 170 persons.

**b) The number and effectiveness of prosecutor’s pre-trial detention requests filed in preliminary proceedings**

| <b>Year<sup>4</sup></b> | <b>Pre-trial detention requests filed in preliminary proceedings</b> | <b>Decisions ordering pre-trial detention in preliminary proceedings</b> | <b>Percentage of granted pre-trial detention requests</b> |
|-------------------------|--|--|---|
| <b>2015</b>             | 13,665   | 12,580   | 92.1%   |
| <b>2016</b>             | 15,172   | 13,791   | 90.9%   |
| <b>2017</b>             | 18,750   | 17,140   | 91.4%   |
| <b>2018</b>             | 19,655   | 17,762   | 90.4%   |
| <b>2019</b>             | 22,381   | 20,340   | 90.9%   |
| <b>2020</b>             | 21,813   | 19,625   | 90%   |

10. There is no doubt that when assessing the practice of applying pre-trial detention, particular attention should be paid to the number of prosecutorial requests for the application of this most stringent preventive measure at the stage of pre-trial proceedings. Thus, in the years 2015-2019, the number of requests submitted increased by over 8,500 – from 13,665 to 22,381. Only in 2020, as compared to 2019, there was a slight decrease (by approx. 550) in the number of the requests submitted by prosecutors, which undoubtedly is the result of the SARS-CoV-2 coronavirus pandemic. Therefore, at the current stage, this change cannot be attributed too much weight and, above all, cannot be treated as a permanent change of practice.

11. As the number of prosecutorial requests for the application of pre-trial detention increases, so does the number of court decisions. Depending on the year, courts issue a

<sup>4</sup> The table was prepared on the basis of reports on the activities of general organisational units of the prosecution service in criminal cases for the years 2015-2020 published by the National Prosecutor's Office at <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/> (accessed on 23-08-2021).

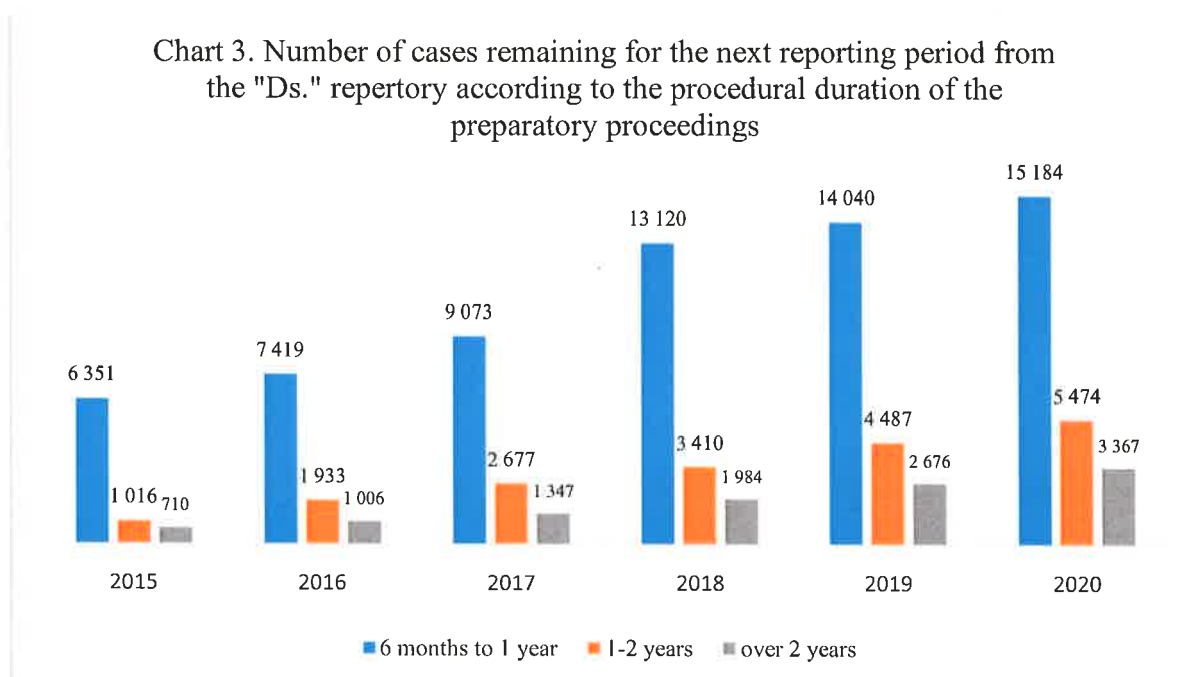
mere 1,000-2,000 decisions denying a request for the application of the most stringent preventive measure.

12. This means that an increase in the number of prosecutorial requests for the application of pre-trial detention does not weaken their “efficiency”, which still amounts to over 90%. However, without examining case files, it is impossible to clearly indicate the cause of such a high rate of court approval of prosecutorial requests.

### c) Criminal proceedings in numbers

13. Before analysing the duration of pre-trial detention in Poland, the HFHR would like to present below statistical data on the length of pre-trial proceedings and court proceedings in criminal cases conducted before district and regional courts.

14. The manner of conducting pre-trial and court proceedings is undoubtedly one of the most important factors influencing the application of preventive measures, including pre-trial detention.



<sup>5</sup> The chart was prepared on the basis of reports on the activities of general organisational units of the prosecution service in criminal cases for the years 2015-2020 published by the National Prosecutor's Office at <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/> (accessed on 23-08-2021).

15. First of all, it should be noted that the number of pre-trial proceedings with a duration of 6 to 12 months has significantly increased – in 2015 there were 6,351 such cases and in 2020 – 15,184. This means that over the last 5 years, the number of such cases has increased by almost 9,000. The situation is no different when it comes to proceedings with a duration between 1 to 2 years, whose number has systematically been increasing since 2015. In 2015, there were 1,016 such cases, and in 2020 – 5,474. Accordingly, we can notice an increase of almost 4,500 in this category of proceedings. In addition, in the years 2015-2020, there were more cases that lasted over 2 years: in 2015, there were 710 such cases, and in 2020 – 3,367, which means an increase of over 2,500.

Chart 4. Number of cases remaining for the next reporting period in criminal cases before district courts

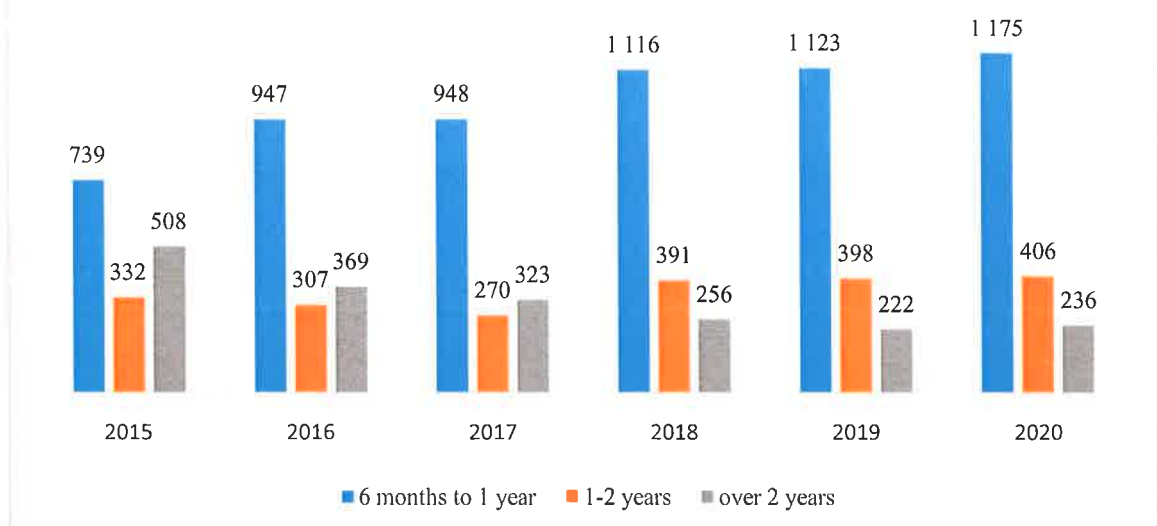


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16. As for district courts, since 2017 they have recorded an increase in the number of criminal cases with a duration from 6 to 12 months: in 2017, there were 35,751 such cases, and in 2020 – 51,978, which translates into an increase of over 16,000. Since 2017, district courts have also heard more cases that last from 1 to 2 years, reporting an increase from 14,321 in 2017 to 19,118 in 2020. Furthermore, since 2018 district courts have seen an increase in the number of criminal cases with a duration of over 2 years (from 6,266 to 6,813 in 2020).

<sup>5</sup> The chart was prepared on the basis of the statistics entitled *Średni czas trwania (dotychczas sprawność) postępowań sądowych wybranych kategorii spraw i instancji (łącznie z czasem trwania mediacji)* [Average duration (efficiency so far) of court proceedings in selected categories of cases and instances (including the duration of mediation)] for 2015-2020, published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,52.html> (accessed on 23-08-2021).

Chart 5. Number of cases remaining for the next reporting period in criminal cases before regional courts

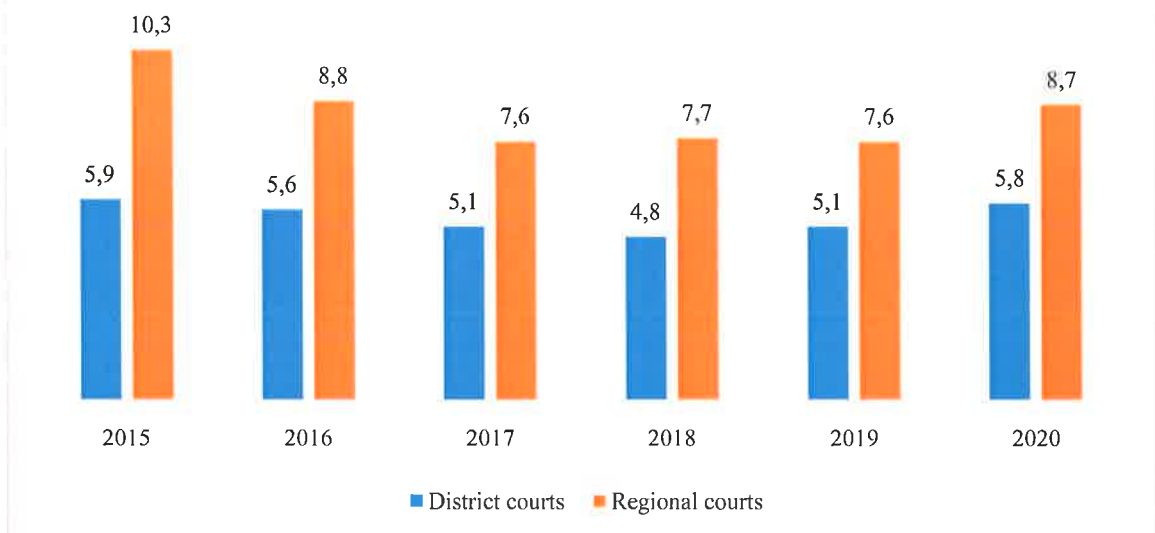


17. Since 2015, regional courts have recorded a year-to-year increase in the number of criminal cases with a duration between 6 and 12 months – in 2015 there were 739 such cases, and in 2020 – 1,175, which means an increase of over 400. As for criminal cases lasting from 1 to 2 years, their number has increased, from 270 in 2017 to 406 in 2020. Meanwhile, the number of criminal cases with a duration of over 2 years heard in regional courts decreased from 508 in 2015 to 222 in 2019. However, in 2020 their number increased by 14, to 236.

<sup>7</sup> The chart was prepared on the basis of the statistics entitled *Średni czas trwania (dotychczas sprawność) postępowań sądowych wybranych kategorii spraw i instancji (łącznie z czasem trwania mediacji)* [Average duration (efficiency so far) of court proceedings in selected categories of cases and instances (including the duration of mediation)] for 2015-2020, published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,52.html> (accessed on 23-08-2021).



Chart 6. Average length of proceedings (months) before district and regional courts in criminal cases



18. Since 2017 the duration of criminal proceedings in district courts has been increasing, from 4.8 months to 5.8 months, which means an increase by 1 month.

19. In 2015, proceedings in regional courts lasted on average 10.3 months. In 2017, their length increased to 7.6 months and remained at a similar level until 2019. But in 2020, the average duration was 8.7 months.

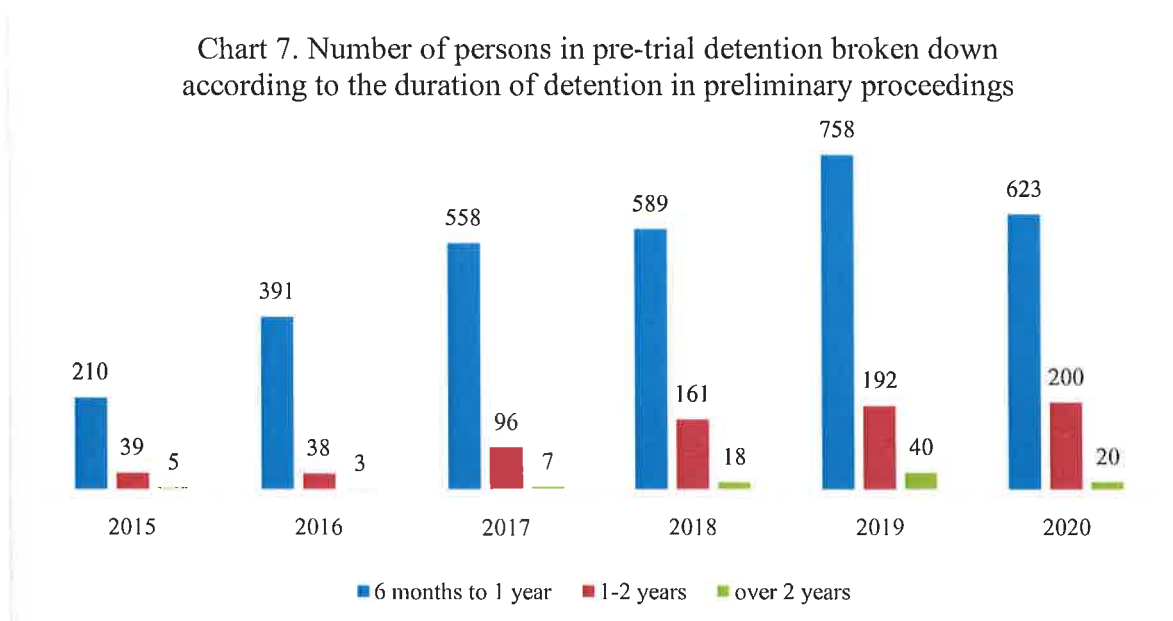
20. Undoubtedly, it should be borne in mind that the SARS-CoV-2 coronavirus pandemic may have a further impact on the duration of criminal proceedings and contribute to a longer duration of such proceedings, which in turn is likely to affect the duration of pre-trial detention.

#### d) Duration of Pre-trial Detention

21. As already indicated in the previous Communication of 21 August 2019, in *Burża v. Poland* ECtHR held that the applicant's detention on remand which lasted five years, three months and nine days has been a violation of Article 5 § 3 of the Convention due to

<sup>3</sup> The chart was prepared on the basis of the statistics entitled *Średni czas trwania (dotychczas sprawność) postępowań sądowych wybranych kategorii spraw i instancji (łącznie z czasem trwania mediacji)* [Average duration (efficiency so far) of court proceedings in selected categories of cases and instances (including the duration of mediation)] for 2015-2020, published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download.2853.52.html> (accessed on 23-08-2021).

an excessive length of the detention period. In light of the above, statistical data will be presented below regarding the duration of pre-trial detention at the stage of pre-trial and court proceedings pending before district and regional courts.

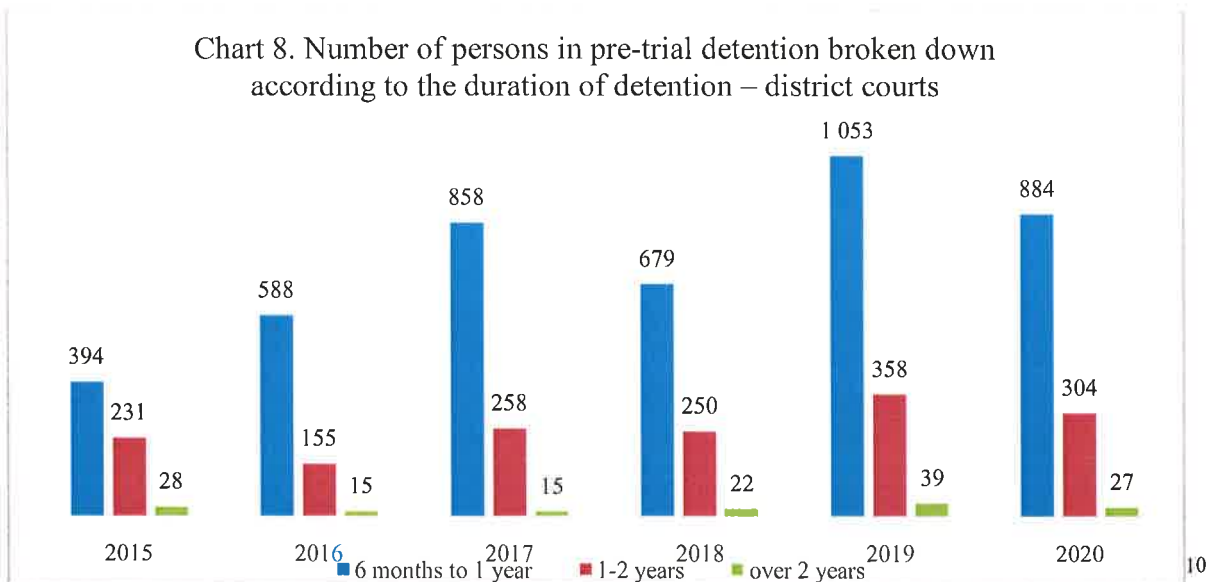


22. According to the above chart, in the years 2015-2019, the number of persons detained on remand for a period from 6 months to 12 months increased from 210 to 758, which gives an increase of nearly 550. In 2020, there was a decrease in the above range (down to 623, i.e. by 135 persons).

23. At the same time, it is worth noting that in the years 2016-2020 there was a steady increase in the number of persons held in pre-trial detention for 1 to 2 years, from 38 in 2016 to 200 in 2020.

24. Until 2019 there had also been an increase in the number of persons detained on remand in pre-trial proceedings for a period exceeding 2 years – in 2015 the figure was 5 persons, whereas in 2019 40 persons. In 2020, the number fell by half, i.e. to 20 persons. At this stage, it is not possible to assess whether this will be a constant trend. Some concerns may arise from the length of pre-trial proceedings (Chart 3), as the number of proceedings, in particular the longest ones, is steadily increasing.

<sup>9</sup> The chart was prepared on the basis of reports on the activities of general organisational units of the prosecution service in criminal cases for the years 2015-2020 published by the National Prosecutor's Office at <https://pk.gov.pl/dzialalnosc/sprawozdania-i-statystyki/> (accessed on 23-08-2021).

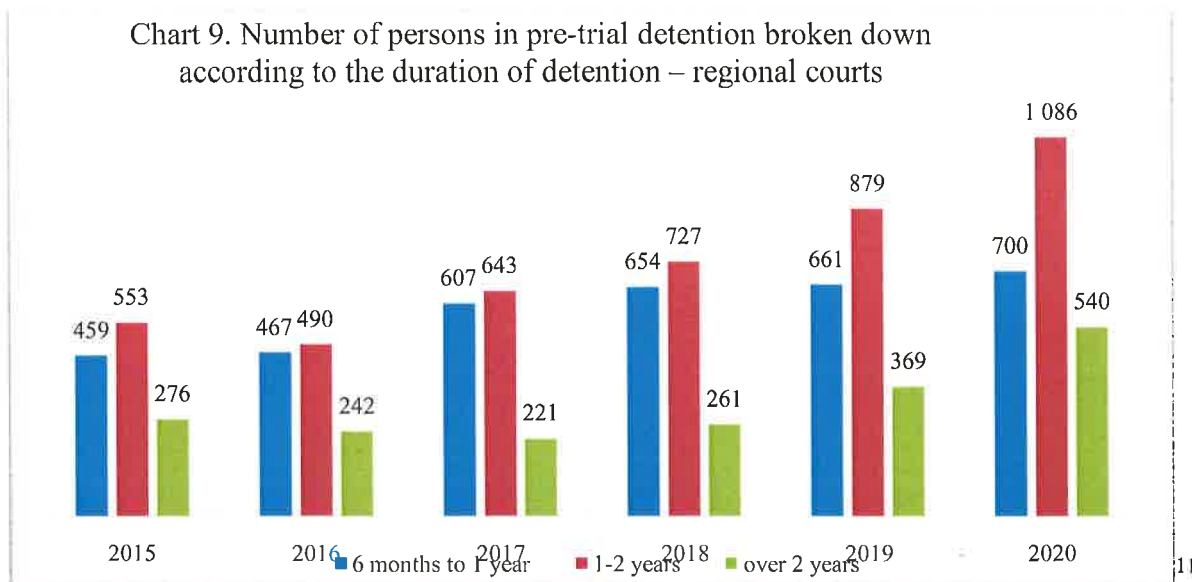


25. As regards court proceedings pending before district courts, it is impossible to define a uniform trend in the number of persons detained on remand for a period from 6 months to 12 months. However, it should be noted that in 2019, the number of persons to whom the strictest preventive measure was applied amounted to 1,053, and in 2020 it was 884. The situation was similar in the case of persons in pre-trial detention for a period between 1 year to 2 years.

26. The number of persons detained on remand for over 2 years by order of a district court fluctuated in the years 2015-2020 between 15 and 39.

27. However, it can be assumed that in 2021 the number of persons in pre-trial detention may increase precisely due to an increase in the number of court proceedings (Chart 4), as well as due to an increase in the average duration of court proceedings pending before these courts (Chart 6).

<sup>10</sup> The chart was prepared on the basis of the statistics entitled *Środki zapobiegawcze orzeczone przez sądy rejonowe i okręgowe w latach 2005-2020* (Preventive measures ordered by district and regional courts in 2005-2020), published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,53.html> (accessed on 23-08-2021).



28. The situation is different regarding pre-trial detention ordered by regional courts. A steady upward trend can be seen in the number of persons held in pre-trial detention between 6 months and 12 months. In 2015 there were 459 such persons, whereas in 2020 – 700, which means an increase of over 50%.

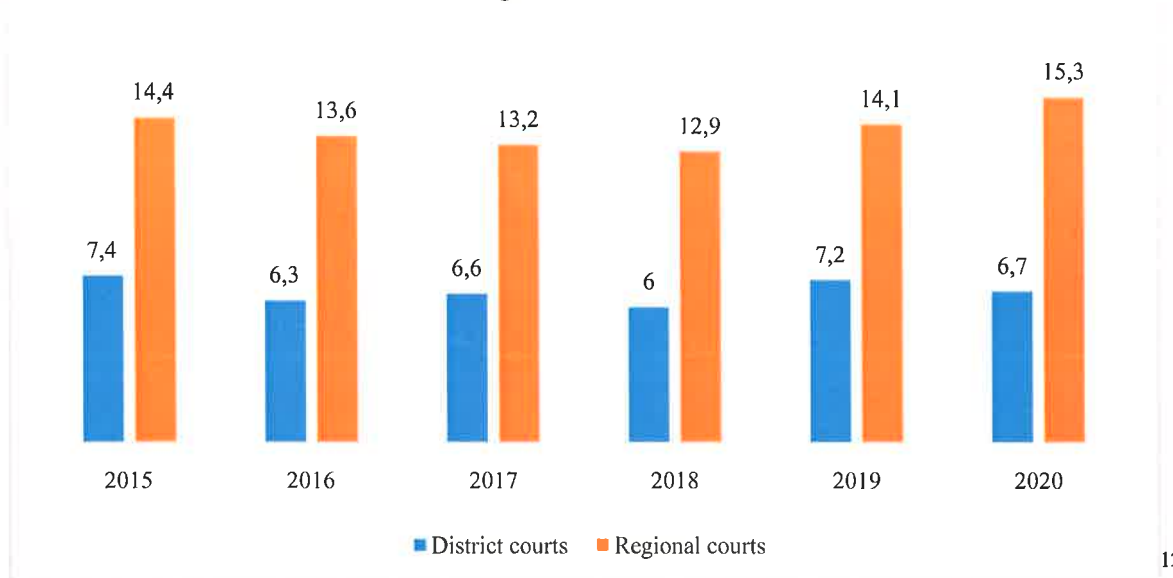
29. The situation is similar in the case of persons on whom the most severe preventive measure is imposed for a period from one to two years. In 2016, their number was 490, while in 2020 it was already 1,086, which means an increase of over 120%.

30. Moreover, regional courts more often ordered detention on remand which lasted for more than 2 years; the number of persons held in detention for such a period rose from 221 in 2017 to 540 in 2020, which means an increase of 319 (i.e. over 140%).

31. Although the number of criminal cases pending before regional courts has remained at a similar level in recent years (Chart 5), we may likely observe a further increase in the number of persons detained for a period between 6 months and 2 years due to an extended length of proceedings (Chart 6).

<sup>11</sup> The chart was prepared on the basis of the statistics entitled *Środki zapobiegawcze orzeczone przez sądy rejonowe i okręgowe w latach 2005-2020* (Preventive measures ordered by district and regional courts in 2005-2020), published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,53.html> (accessed on 23-08-2021).

Chart 10. Average duration of pre-trial detention (months) ordered by district and regional courts in 2015-2020



32. In light of the above data, it is impossible to identify a uniform trend in the average duration of pre-trial detention in first instance court proceedings pending before district courts. In 2018 it was 6 months, in 2019 – 7.2 months, while in 2020 – 6.7 months.

33. At the same time, the average duration of pre-trial detention ordered by regional courts in 2018 and 2020 was 12.9 and 15.3 months, respectively, which translates into an increase of almost 2.5 months.

### III. Conclusions

34. Due to the SARS-CoV-2 coronavirus pandemic, it is impossible to predict how the situation of persons in pre-trial detention in Poland will look in the coming months. Nevertheless, it should be noted that the population of persons held in pre-trial detention in Polish penitentiary facilities has been growing steadily in recent years. In addition, prosecutors are submitting more and more requests for the application of pre-trial detention every year (despite a slight decrease, by approx. 550, between 2019 and 2020), and the effectiveness of these requests is still very high – ca. 91%.

<sup>12</sup> The chart was prepared on the basis of the statistics entitled *Środki zapobiegawcze orzeczone przez sądy rejonowe i okręgowe w latach 2005-2020* (Preventive measures ordered by district and regional courts in 2005-2020), published by the Ministry of Justice at <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,53.html> (accessed on 23-08-2021).

35. At the same time, the duration of pre-trial proceedings is increasing steadily, which may undoubtedly affect the length of pre-trial detention at the stage of prosecutorial investigation. Also in district courts, the number and average duration of lengthy cases are systematically increasing, which may lead to an increase in the average duration of detention on remand. However, special attention should be paid to regional courts, which handle the most difficult and complex criminal cases, notably in the first instance. In regional courts, both the number of proceedings lasting for longer periods and the average duration of cases are increasing. Also in these courts, the number of persons detained on remand for more than 6 months is clearly increasing, as is the average duration of detention on remand.
36. Considering the above, according to the HFHR, the situation of persons in pre-trial detention in Poland may deteriorate further, due to the SARS-CoV-2 coronavirus pandemic as well as the previous practice of criminal justice authorities.
37. The above data clearly show that the judgment in the case of *Burza v. Poland* should not be considered as being executed at a general level.

#### **IV. Recommendations**

38. HFHR would like to confirm that the recommendations contained in the Communication of 21 August 2019 remain fully valid and relevant.
39. In HFHR's opinion in order to fully implement the judgement in the *Burza v. Poland* case additional changes should be introduced by Polish authorities<sup>13</sup>:
- a) The wording of Article 5 § 3 ECHR should be transposed directly into the Code of Criminal Procedure so that to ensure that outcomes of the application of the Code are not in conflict with the ECHR and so that it would be clear to any national judge that “*Everyone arrested or detained ... has the right to be tried within a reasonable time or*

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<sup>13</sup> The recommendations are based on the recommendations presented in the Report: “*The Trials of Pre-trial Detention. A review of the existing practice of application of pre-trial detention in Poland*”, Adam Klepczyński, Piotr Kładoczny, and Katarzyna Wiśniewska, Warsaw July 2019, p. 54-56 [http://www.hfhr.pl/wp-content/uploads/2019/07/HFPC\\_Raport\\_-\\_Tymczasowe-aresztowanie-nietymczasowy-problem-EN.pdf](http://www.hfhr.pl/wp-content/uploads/2019/07/HFPC_Raport_-_Tymczasowe-aresztowanie-nietymczasowy-problem-EN.pdf) (accessed on 23-08-2021).

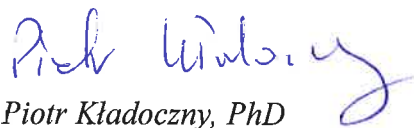
*be released pending trial. A person's release from detention may require this person to provide guarantees that they will appear for trial.*” There are somewhat similar laws currently in force in Poland, but they do not use such clear language;

- b) An alternative option would be to introduce a maximum and non-extendable term of pre-trial detention.
- c) The “*severe penalty that the accused may face upon conviction*” (Article 258 § 2 CCP) should no longer serve as a ground for pre-trial detention. This is the ground invoked by courts in the vast majority of the pre-trial detention decisions, as it is the easiest one to show. The reading of Article 258 CCP brings an irresistible impression that § 2 of that Article constitutes a general clause that facilitates proving the obstruction of proceedings described in § 1;
- d) The list of preventive measure in the Code of Criminal Procedure should be expanded by the addition of house arrest and/or electronic monitoring.

40. In view of the above-mentioned reasoning, the HFHR respectfully argues that the Committee of Ministers should continue its supervision of the execution of the judgment *Burza v. Poland*. In our opinion, the general measures taken by Polish authorities are not sufficient to prevent further Convention violations similar to those found in this case.

41. HFHR would like to express its readiness to cooperate with the Committee of Ministers in matters related to the monitoring of the effective implementation of the ECtHR judgement.

*On behalf of Helsinki Foundation for Human Rights,*



*Piotr Kładoczny, PhD*

Deputy President of the Board

Helsinki Foundation for Human Rights