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Warsaw, 12th September 2019

1368../2019/PSP/MSZ

To:
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COMMUNICATION FROM THE HELSINKI FOUNDATION FOR HUMAN RIGHTS

CONCERNING

EXECUTION OF ECtHR JUDGMENTS IN CASES *ADAMKOWSKI V. POLAND* (APP. NO. 57814/12) AND *PAROL V. POLAND* (APP. NO. 65379/13)

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

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I. Introduction

1. The Helsinki Foundation for Human Rights ("the HFHR", or "the Foundation") respectfully presents opinion on the execution of the judgments of the European Court of Human Rights ("the ECtHR", "the Court") of 28 March 2019 in the case of *Adamkowski v. Poland* (application no. 57814/12) and of 11 October 2018 in the case of *Parol v. Poland* (application no. 65379/13).

2. The HFHR is a non-governmental organisation set up to protect human rights, also by reviewing the observance of human rights by public authorities in Poland. The Foundation carries out its statutory responsibilities by representing clients in proceedings before national courts and international human rights bodies, submitting amicus curiae briefs in judicial proceedings, preparing opinions on legislative proposals and delivering statements to state bodies. The Foundation also monitors the execution of judgments of the European Court of Human Rights in cases brought against Poland. In this respect, we have already presented the Committee of Ministers with our assessments of the execution of a number of ECtHR judgments, including the following: *P. and S. v. Poland* (judgment of 30 October 2012, application no. 57375/08), *Kędzior v. Poland* (judgment of 16 October 2012, application no. 45026/07), *Beller v. Poland* (judgment of 1 February 2005, application no. 51837/99), *Rutkowski v. Poland* (judgment of 7 July 2015, application no. 72287/10).

3. The right to a court is a crucial area of the Foundation's work. Over the years, the HFHR has taken a number of actions to protect the standards of a fair trial in Poland. From that perspective the ECtHR judgments in the cases of *Adamkowski v. Poland* and *Parol v. Poland* are in the sphere of interest of HFHR as they concern disproportionate restrictions of the right to court in the form of excessively formalistic application of domestic law and lack of proper mechanisms of instructing parties by court in the civil proceedings.

II. The judgments of the European Court of Human Rights

4. The applicant in the case of *Parol v. Poland*, imprisoned in Warsaw, lodged civil claim against several prisons, requesting compensation for allegedly inadequate conditions of detention. The court of first instance dismissed his claim. The applicant appealed, however he did not attach mandatory copy of the appeal for the opposite party of the proceedings. The court asked Mr Parol to fix formal deficiencies of his appeal by submitting a copy thereof within seven days. The applicant did not possess any copy of the appeal submitted and so he asked the court to provide him a copy of it. When the court did not react, Mr Parol submitted a handmade copy which was not identical with the original appeal submitted. Because of that, the court rejected the appeal on formal grounds. The decision of the court of first instance on the rejection of the appeal was subsequently upheld by the court of appeal.

5. The ECtHR ruled that the application of law by the Polish courts was excessively formalistic and inconsistent with Article 6 § 1 of the Convention. The Court took into account that Mr Parol was not represented by professional lawyer and was deprived of liberty throughout the proceedings. Therefore, with regards to interpretation of procedural requirements he could rely on the information provided to him by the courts. In this context, the ECtHR noted that the court of first instance did not instruct the applicant that the appeal should be lodged with mandatory copy attached. Moreover, the applicant tried to comply with the court's request to fix formal deficiencies: he request to provide him with the copy of the

appeal and later submitted a handmade copy. Therefore, he displayed the diligence which should normally be expected from a party to civil proceedings.

6. The facts of the case of *Adamkowski v. Poland* were relatively similar to the case of *Parol v. Poland*. Mr Adamkowski was also imprisoned and brought a civil action for infringement of his personal rights on account of inadequate conditions of detention. When his civil action was dismissed, he lodged an appeal. However, similarly as in the case of *Parol v. Poland*, Mr Adamkowski did not attach mandatory copy of the appeal and so he was asked by the court to fix formal deficiencies of his appeal. Due to the fact that the applicant did not possess a copy of the original appeal submitted, he sent to the court a handmade copy which was not identical to the original. Domestic courts held that such "copy" was insufficient to comply with the formal requirements and rejected the appeal.

7. The ECtHR ruled that there was a violation of Article 6 § 1 of the Convention. The Court noted that unlike Mr Parol, Mr Adamkowski "was informed on three occasions that he should send specific pleadings to the court in two copies". However, he was never informed generally that all pleadings must submitted in two copies. Also the instruction about the time and manner of lodging the appeal did not contain information on this obligation. Therefore, taking into account that the applicant attempted to comply with procedural obligations by sending handmade copy of the appeal, the ECtHR held that rejection of his appeal was excessively formalistic.

III. Execution of the judgments

8. The HFHR agrees with the Government that in order to implement analysed judgments of the ECtHR it is not necessary to change "the existing legal provisions requiring submission of multiple copies of one's pleadings for the purposes of their service on the court and other parties to the proceedings (Article 128 § 1 of the CCP, and Articles 368 § 1 and 370 of that Code – in respect of the appeal proceedings) or the established practice requiring the copies of pleadings to faithfully reflect the content of an original pleading, as only then they can be regarded as real copies."[1] However, in our opinion it is necessary to undertake general measures in order to ensure that parties to the civil proceedings, who are not represented by professional lawyers, are adequately, and in understandable manner, instructed by court about their procedural rights and obligations.

9. According to Article 5 of the Code of Civil Procedure (hereinafter: "CCP"), "in the event of justified need, the Court may provide the necessary instruction as to the procedural acts to parties and participants in the proceedings who are not represented by advocate, legal advisor, patent advisor or counsellor at the General Counsel to the Republic of Poland." Therefore, as a general rule, the law does not impose a general obligation on the courts to instruct parties to the civil proceedings. According to case law of the Supreme Court such obligation may arise only in exceptional cases, for example with regards to participants who due to mental

[1] Information about the measures to comply with the judgments in the cases of *Parol against Poland* and *Adamkowski against Poland* submitted by the Government on Poland to the Committee of Ministers on 21 August 2019, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168096fb5b (accessed on: 11 September 2019).

disorders are unable to fully understand their procedural situation and effectively protect their rights[2].

10. At the same time, CCP obliges courts to provide parties with instructions in certain specific contexts. For instance, according to Article 206 § 2 of the CCP, simultaneously with the delivery of the claim and summons to the first hearing, the defendant must be instructed about procedural steps that he/she may or should take if he/she does not recognize the claim in whole or in part, in particular about the possibility or obligation to submit a response to the lawsuit, the consequences of not taking such actions and the possibility for the defendant to appoint a legal representative. Moreover, according to Article 327 of the CCP, party not represented by a professional lawyer, who was present at the delivery of the judgment, must be instructed about the manner and deadline for lodging an appeal. A party not represented by a lawyer, which, as a result of deprivation of liberty, was absent when the sentence was announced, shall be ex officio served by the court with a sentence of a ruling and instructed on the date and manner of lodging an appeal.

11. However, because of the fact that there are no uniformed models of instruction, the practice with regards to the scope and clarity of the instructions varies between different courts. In 2013 the Ombudsman critically assessed practice in this area.[3] For example, with regards to practice of application of the abovementioned Article 327 of the CCP the Ombudsman noted "The analysis of the instructions (...) allows to state that sometimes these instructions are very detailed and sometimes laconic. Some courts instruct only about the law and the time limit for appealing against a judgment, while others specify that the appeal may concern only the decision on the substance of the case, and that the decision on costs contained in the judgment is subject to an interlocutory appeal that is lodged at a different, shorter time. It also happens that the courts inform parties about the content of art. 369 § 3 of the Code of Civil Procedure and explain what should be included in the appeal so that it meets the requirements of a general pleading on the one hand and satisfies the requirements of an appeal or interlocutory appeal on the other. Some instructions also contain information about the need to determine the value of the subject of the appeal, court fee and the consequences of not paying it." The Ombudsman underlined that the lack of clarity with regards to content of instructions is even more serious taking into account that rights of parties who relied on wrong or incomplete instructions are not effectively protected. Therefore, the Ombudsman suggested that the authorities should take actions to regulate and at the same time standardize the content of the instructions provided on the basis of the CCP.

12. It is worth to note that in July 2019 the Parliament adopted a law amending the CCP which introduced certain important legislative changes with regards to duties of court to instruct parties of civil proceedings. In this context, the new law, among others, obliges the Minister of Justice to specify, in the regulation, models of instructions required by the CCP, taking into account the need to ensure understandability of information. Moreover, such models of instructions, with translation to the most common foreign languages, would have to be published in the Internet. However, this new provision will enter into force on 7 August 2020 and so the Minister has not issued said regulation yet. On 2 August 2019 the Ombudsman, referring to the ECtHR's judgments in the cases of *Parol v. Poland* and

[2] See e.g. decision of the Supreme Court of 27 September 2012, ref. no. III CSK 13/12.
[3] Letter of the Ombudsman to the Minister of Justice, 18 February 2013, ref. no. RPO-712911-IV/12/JP.

Adamkowski v. Poland, asked the Minister of Justice to provide information on the stage at which the legislative works on the abovementioned regulation are at the moment, as well as to take a position on the necessity of including in the instructions provided information on the number of copies of pleadings submitted by the parties.[4] The Minister replied that the works on the regulation are in the initial phase and the decisions with regards to detailed scope of instructions have not yet been taken[5].

13. Therefore, at the moment the problem of insufficient regulation of the courts' duties to instruct parties to civil proceedings has not yet been resolved. The law obliges courts to instruct parties, acting without legal representatives, "about the manner and deadline for lodging an appeal", but does not provide specifically that such instruction should include also information about the necessity to submit legal pleadings with necessary copies. Moreover, the law does not ensure that such instructions are sufficiently clear and understandable. For these reasons, in our opinion, the ECtHR judgments in the cases of *Adamkowski v. Poland* and *Parol v. Poland* have not yet been fully implemented on the general level. Such implementation would be finalized only after adoption by the Minister of Justice adequate harmonized models of instructions.

IV. Recommendations

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

1) The Minister of Justice should adopt a regulation with harmonized model of instructions taking into account necessity of providing parties to proceedings with all necessary information, including duty to submit all legal pleadings in required number of copies, and in an understandable manner.
2) The Committee should request the Polish Government to provide regular information on the stage of works on the regulation of the Minister of Justice on the harmonized model of instructions to parties in civil proceedings and assess compatibility of scope and manner of instructions with standards of Article 6 § 1 of the Convention.

15. The Helsinki Foundation for Human Rights wishes to express its willingness to further assist the Committee of Ministers of the Council of Europe in the monitoring of the proper execution of the judgments of the European Court of Human Rights in the cases of *Adamkowski v. Poland* and *Parol v. Poland*.

On behalf of Helsinki Foundation for Human Rights,

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[4] Letter of the Ombudsman to the Minister of Justice, 2 August 2019, ref. no. IV.510.26.2019.KB.
[5] Letter of the Minister of Justice to the Ombudsman, August 2019, ref. no. DLPC-V.053.3.2019.