

**REPORT**  
**ON**  
**STUDY VISIT OF NORWEGIAN JUDGES AND PRESIDENTS**  
**OF POLISH COURTS**  
**TO THE EUROPEAN COURT OF HUMAN RIGHTS AS WELL**  
**AS TO THE COUNCIL OF EUROPE**

**(29<sup>TH</sup> November 2016 – 2<sup>ND</sup> December 2016)**



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## **General information on study visit**

The Norwegian Courts Administration and the Ministry of Justice of the Republic of Poland organized in cooperation with the Council of Europe a study visit in Strasbourg CoE institutions for representatives of Polish and Norwegian judicial authorities. The visit took place from 29<sup>th</sup> November till 2<sup>nd</sup> December 2016. There were 27 participants from both partner States (18 judges of Polish regional courts, 3 employees of the Ministry of Justice of the Republic of Poland, 2 interpreters, 2 judges from Norway, 1 Norwegian human rights expert and 1 employee from Norwegian Courts Administration).

The principal aim of the visit was to disseminate knowledge on human rights standards among people who have influence on developing the jurisprudence of national courts. It was also important to enable the participants to discuss how the European Court of Human Rights standards can be implemented in Poland and in Norway. Another objective of the programme was the increase of practical competences of judges in the area of their communication with the European Court of Human Rights. It is of crucial importance to ensure that judges who apply the European Convention on Human Rights are fully capable of researching necessary information in CoE databases and of analyzing them in the spirit of the Convention. Finally, it must be mentioned that organizing by Polish and Norwegian administration bodies a joint project is a good opportunity to strengthen ties of cooperation between partner States.



During the visit the participants had the opportunity to meet with representatives of the European Court of Human Rights and with the employees of the organizational units of the Council of Europe (such as e.g.: Office of the Commissioner for Human Rights, European Commission for the Efficiency of Justice). The programme predicted also the meetings with Mr Krzysztof Wojtyczek and Mr Eric Møse – judges elected in respect of the Republic of Poland and the Kingdom of Norway. The participants had also a possibility to participate in the hearing of the case *Bărbulescu v. Romania* (application no 61946/08) which took place before the Grand Chamber on 30<sup>th</sup> November 2016.

All these meetings and trainings raised awareness of judges of the importance of rights guaranteed by the European Convention on Human Rights and of the fact that both States cannot cease to reinforce their efforts made in order to ensure the application of fundamental human rights.

### **The importance of the European Convention on Human Rights**

The Convention for the Protection of Human Rights and Fundamental Freedoms (widely known as the European Convention on Human Rights) was signed in Rome on 4<sup>th</sup> November 1950 by 12 member states of the Council of Europe (among which there was Norway). The stipulations of the Convention entered into force in 1953.

By an act of ratification of the Convention the contracting States expressed their jointly shared view that, as it is stated in the Preamble to the Convention, “fundamental freedoms which are the foundation of justice and peace in the world [...] are best maintained by [...] a common understanding and observance of Human Rights upon which they depend”.

In contrary to previously adopted international acts on human rights (such as Declaration of Human Rights of the United Nations from 1948) whose role was limited to the elaboration of mere declaration of fundamental rights (which cannot be invoked by individuals), the European Convention was designed to be a binding legal act whose observance will be guaranteed through control mechanisms maintained by international bodies competent to recognize complaints from individuals (at the time of the adoption of the document this power was vested in the European Commission on Human Rights and in the European Court of Human Rights).

As time went by, more and more European countries expressed their unequivocal will to become a member of the Council of Europe and consequently to sign and ratify the

European Convention on Human Rights. Nowadays, this document is a binding legal instrument in 47 states of the Council of Europe. As far as the Republic of Poland is concerned, its government signed the Convention on 26<sup>th</sup> November 1991 (which entered into force in 1993).

What is more, the sole text of the Convention was several times amended and extended. Today, the Convention (and its additional protocols) protects not only the first-generation rights (such as right to life, prohibition of torture, freedom of expression, freedom of religion, right to a fair trial etc.), but also some social and economic rights (e.g.: right to peaceful enjoyment of one's possessions, right to education). Taken as a whole, the rights enshrined in the Convention can be divided into 2 groups – those that can be limited in clearly defined situations (i.e. when it is proved that all the conditions enumerated in detailed stipulations of the Convention are met) and those that cannot be limited under no circumstances (this category contains e.g.: the prohibition of torture, prohibition of slavery, the *ne bis in in idem* rule).

However, irrespective of the existence of different tiers of protection of conventional rights, it is undisputable that the state's basic duty is to ensure the effective protection of all fundamental freedoms guaranteed by the Convention. The efforts undertaken to achieve that goal should result not only from the necessity to respect *pacta sunt servanda* rule and consequently to fulfill the obligations imposed by the international legal act, but primordially the state's actions taken in order to implement conventional standards should epitomize government's deep attachment to the values underlying the Convention. The stipulations of the European Convention that is often perceived as a kind of contemporary European Charter of Freedoms (or even a type of supra-national Constitution) simply cannot be ignored.

For these reasons the discussion between judges, legislators and other holders of state power should concentrate on elaborating proper methods which might be adopted to fulfill the obligations resulting from the Convention and to promote European human rights standards among state officials whose decisions may have impact on individuals rights.

### **The challenge to eliminate the violations of the Convention**

One of the indicators that allows to assess how each state-party of the Convention copes with the obligation of ensuring its application is the number of judgments of European Court of Human Rights finding violations of the "European Convention". It is worth noting

that the ECHR publishes on its website detailed statistical reports comparing different states in terms of number of violations of conventional rights. The table presented below shows the total number of the violations of the Convention from 1959 to 2015 in all 47 states of the Council of Europe.

STATE	Total number of judgment finding violations of the Convention (1959-2015)
Albania	60
Andorra	6
Armenia	60
Austria	352
Azerbaijan	106
Belgium	218
Bosnia and Herzegovina	43
Bulgaria	577
Croatia	315
Cyprus	69
Czech Republic	218
Denmark	43
Estonia	47
Finland	185
France	962
Georgia	64
Germany	287
Greece	881
Hungary	407
Iceland	16
Ireland	32
Italy	2 336
Latvia	107
Liechtenstein	8
Lithuania	118
Luxemburg	44
Malta	66
Republica of Moldova	316
Monaco	2
Montenegro	22
Netherlands	146
Norway	40
Poland	1 099
Portugal	309
Romania	1 197
Russian Federation	1 720
San Marino	14
Serbia	132

<b>Slovak Republic</b>	336
<b>Slovenia</b>	337
<b>Spain</b>	135
<b>Sweden</b>	144
<b>Switzerland</b>	162
<b>The former Yugoslav Republic of Macedonia</b>	121
<b>Turkey</b>	3 182
<b>Ukraine</b>	1 053
<b>United Kingdom</b>	526

source: [http://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2015\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf) (19.01.2017)

As the table clearly demonstrates Norway can be considered as a State with one of the smallest number of violations of the conventional rights. It may lead to conclusion that Norwegian legislation and its organization of judicial system should be an inspiration for developing countries. However, while comparing Norway and Poland we cannot forget about the difference in number of inhabitants (approximately 5.3 million in Norway, approximately 38 million in Poland).

As regards Poland, the statistical data presented above might be interpreted as a sign, that during the transition period in which that country had been introducing the institutions typical of liberal democratic state, Poland did not succeed to ensure the proper application of European human rights standards. Thus, it is crucial for Polish policy-makers, civil servants and judges to remain in constant relation with their Norwegian partners, whose experience in the area of human rights cannot be belittled.

The real challenge for upcoming years is then to detect possible sources of violations of the Convention and ensure that the law adopted by the parliament can be easily conciliated with ECHR standards. It must be, however, stressed that the problem with respecting conventional standards can be attributed not only to so-called *law in books*, but also to *law in action*.

It is then important to assure that those who apply legal regulations and make decisions that influence individuals' rights are aware of the fact that national legislation should be interpreted in such way that would guarantee its conformity with the Convention. For this reason, state's activity must also concentrate on promoting knowledge on conventional standards among state officials, judges and other decision-makers.

It must be mentioned that Polish government vigorously takes actions in order to ensure that ECHR standards become widely accessible. Whenever the European Court of

Human Rights delivers a judgment finding a violation of conventional rights of an individual, the state seeks not only to redress effects of such violation as regards to the victim, but also to disseminate ECHR judgment and explain its meaning, so that the similar violation would not appear in the future.

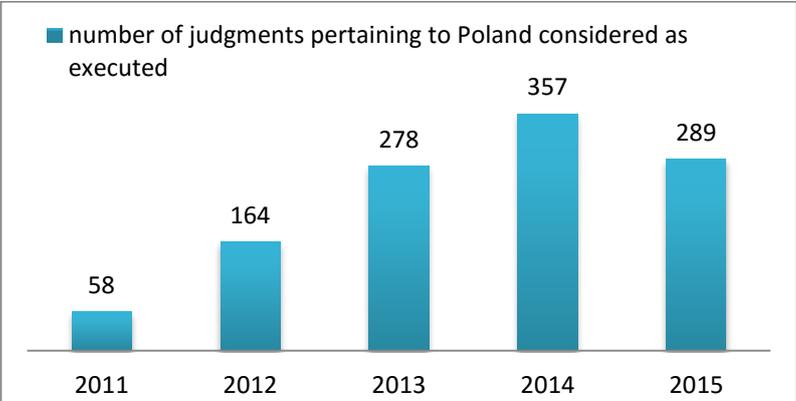
The Polish procedures concerning the way of executing the ECHR judgments are worth analyzing, because it shows how Poland deals with the problem of eliminating those sources of violations of human rights which were clearly indicated in judgments of the European Court.

**Execution of judgments of the European Court of Human Rights – measures to apply in order to avoid repetitive violations**

According to the Article 46 of the Convention “the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties”. The process of the execution of ECHR judgments is supervised by the Committee of Ministers of the Council of Europe.

Today more than 200 Polish cases are pending execution, whereas as far as Norway is concerned there is only one single case which the Committee of Ministers has not struck out from its list.

However, it must be noted that despite a large number of cases that still have to be executed, Poland made an undeniable progress in past years in accomplishing the task of execution of judgments. The graph below presents the number of Polish cases, which were deemed executed in the years 2011-2015.



This progress was possible thanks to the adoption of the procedures which are consistent with guidelines made by the Committee of Ministers in its *Recommendation*

*CM/Rec (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.*

In its introductory part the Recommendation emphasizes the importance of the process of executing the ECHR judgments by recalling that it contributes “to enhancing the protection of human rights in member States and to the long-term effectiveness of the European human rights protection system”.

In order to ensure that the process of execution of judgments would be well-planned, the Recommendation strongly suggests to designate a coordinator who should divide tasks between relevant national authorities and “develop effective synergy” between them. In Poland this role is vested in the government’s agent representing the Ministry of Foreign Affairs.

The role of the Ministry of Justice (and its Unit for proceedings before the European Court of Human Rights) in the process of the execution of judgments is mostly zeroed in on preparation of actions plans concerning necessary changes in the system of justice. It is also focused on promoting the standards resulting from ECHR case-law among Polish judges, so that their decisions will be consistent with human rights standards.

Conformingly to the recommendation made by the Committee of Ministers of the Council of Europe, the Ministry of Justice ensures rapid translation of ECHR jurisprudence and its dissemination to relevant actors. All judgments in non-repetitive Polish cases are translated immediately after its publication by the European Court of Human Rights. The Ministry also takes steps to translate cases from other CoE States which concern problems that may arise before Polish courts.

After the translation of the ECHR judgment, its Polish language version is transmitted to the court whose action was considered as a breach of conventional rights. Furthermore, presidents of the courts regularly receive translations of judgments in which the European Court did not find any violation, so that they become acquainted with examples of good practices.

All these translations are also fully accessible to the greater public because of their publication on Ministry of Justice website. As it was stated in the explanatory memorandum to the *Recommendation Rec (2002)13 of the Committee of Ministers on the publication and dissemination in the member states of the text of the European Convention on Human Rights*

*and of the case-law of the European Court of Human Rights*, the government's obligation to ensure that judiciary has necessary equipment to access case-law through Internet "is perhaps one of the most important element in the Recommendation, if the aim of effective implementation of the Convention on the national level is to be achieved". This remark which was made by the Committee of Ministers in December 2002 seems to be even more important nowadays, when the Internet is widely perceived as a principal source of information.

For this reason, the Ministry of Justice of the Republic of Poland concentrate its efforts on regular updating information published on its website. Apart from translations of ECHR judgments, the government publishes informative materials concerning recent judgments and decisions made by the "Strasbourg Court" in Polish cases. Moreover, those who visit ministerial website can find Polish language version of the most important recommendations and guidelines of the Committee of Ministers of the Council of Europe as well as all necessary information on the procedure of lodging an application to the Court.

From 2009-2016 the Ministry of Justice elaborated its own detailed analyses on the jurisprudence of the ECHR in different matters. This collection of so-called "human rights standards" can be easily found on governmental website and it must be stressed that it is highly appreciated by Polish judges who consider it as an useful tool to get acquainted with European Court's vision of human rights. The publications which are most often downloaded from the website concern the following topics: the prisoners' rights, the length of arrest and detention period, freedom of expression and witnesses' rights during the trial.

Apart from elaborating its own analyses the Ministry ensures the translation of publications made by CoE experts which are also meticulously examined by judges, prosecutors and all state-officials who have to apply the Convention in everyday practice.

Thus, it can be concluded that Poland fulfills its duty to disseminate as widely as possible the knowledge on European human rights standards, which should lessen the risk of the appearance of the violations of the Convention in the future.

### **The necessity of further trainings**

However useful are the actions mentioned above, it must be noticed that publication of even most thorough analyses on governmental website does not itself guarantee that all judges would internalize ECHR standards.

Therefore, it is important that experts in international human rights maintain constant professional relations with judges, prosecutors and other employees of the judiciary. For that reason, the Ministry of Justice of the Republic of Poland regularly organizes trainings and workshops that are aimed at sensitizing judges to the importance of application of the conventional standards. This direct contact between practitioners and experts is always an opportunity to exchange experience and clarify all doubts concerning the interpretation of the stipulations of the Convention.

The need to organize such professional trainings is also underlined by the Committee of Ministers of the Council of Europe, which declared that “it appears necessary that all members States ensure that adequate education on Convention is provided, in particular concerning legal and law enforcement professions”<sup>1</sup>.

Nevertheless, it should be stressed that apart from trainings organized on national level, it is beneficial for lawyers who either enact or apply legal regulations to participate in workshops organized in European or International level.

As far as trainings on European Convention on Human Rights are concerned, the opportunity to share knowledge and experience of Polish judges and civil servants with their peers from Norway (which is a European leader in the area of respecting human rights standards) cannot be underestimated.

The study visit which was organized in Strasbourg in November/December 2016 must be then treated as a success and it is more than evident that it strengthened participants’ interest in conventional standards. It might be expected that it would contribute to more diligent application of the European human rights standards in both partner States.

Due to doubtless positive effects of the training, it is strongly recommended to organize similar projects in the future which would increase the knowledge on the content of the most fundamental rights recognized on European level and which would strengthen cooperation between the Republic of Poland and the Kingdom of Norway.

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<sup>1</sup> See p. 3 of the Appendix to Recommendation Rec (2004) 4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training.