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Working session 7 – Access to justice – Timely and enforceable court decisions

**Ministry of Justice of Poland**

### **Reform of the Polish justice system**

This afternoon session devoted to the issue of timely and enforceable court decisions gives me – as a representative of Poland – an opportunity to briefly present the currently conducted reform of the Polish criminal justice system.

Following the morning session „Accessible and affordable legal assistance”, I would like to agree with my previous speakers that in a democratic state ruled by law and implementing the principles of social justice, the material status cannot be an obstacle to access to justice nor to protection of human rights and interests. The Polish Ministry of Justice is currently conducting work on amendment to draft law on access to State’s free legal aid to natural persons. This act aims at increasing access to legal aid for the poorest as well as reducing costs of management of legal aid system. The most crucial point made in the amendment is an addition of the national pre-court system of legal aid to the existing system of legal aid in Poland.

Coming back to the main topic, I would like to present 3 types of reforms of the criminal justice system which are currently being conducted. These drafted amendments aim at ensuring proper enforcement of court decisions and minimizing delays in the administration of justice.

The first reform is concerned with the introduction of the so-called 24-hour courts, the second one deals with the possibilities of imposing discipline measures on the parties to the court proceedings, while the third one addresses the issue of changes to the penalty execution code aimed at enhancing the effectiveness of court sentences.

#### **1. 24-hour courts**

One of the biggest problems the Polish justice system has to face is the lengthiness of the criminal proceedings. In order to respond to this problem, the Polish penal procedure envisages the restoration of summary proceedings as one of the special court procedures. The summary proceedings result from the need to radically improve and accelerate State activities in the area of law enforcement and crime reduction. The issue how fast criminals are brought

to justice is, without doubt, crucial to the effectiveness of justice system and to the social perception of the functioning of justice system.

The project introduces the summary proceedings against perpetrators caught in the act of committing a crime. The party will be tried summarily if he or she committed a crime subject to a punishment of not more than five years of imprisonment, including acts of vandalism, was caught in the act of committing a crime (or right afterwards) and sent to the court within 48 hours from the moment he or she is detained. The crimes in question include driving under the influence of alcohol, theft, petty robbery, damage to property, or seizure of a vehicle. As the perpetrator was caught red-handed, the evidence collected should be enough to convict him within the next 24 hours. If necessary, a court may defer trial for 14 days. A court in a summary proceedings may not punish a defendant with imprisonment of more than 2 years. A judgment may be appealed, but deadlines for an appeal to be filed and examined are shorter than usual.

It should be stressed that in order for defendants to enjoy their basic rights at every stage of the proceedings, and to ensure them a fair trial, the project envisages non-standard trial guarantees for defendants at the stage of jurisdictional proceedings: obligatory assistance of the counsel for the defence and obligatory participation of the public prosecutor in the trial.

## **2. Imposing discipline on the parties to the proceeding**

In order to eliminate the parties' notorious practice to tactically prolong proceedings, it is envisaged that courts could impose more discipline on the parties to the criminal proceedings. The court practice shows that the actions made by the parties to the proceedings greatly affect the length of time of the proceeding, making it way too long. Fines will be imposed for unreasonable refusal to: testify, take the oath, perform duties of a court expert, interpreter or specialist, return an item and perform duties of a guarantor. A decision to impose a fine could be appealed. In case procedural duties are clearly violated by a counsel for the defence or a representative, a court and a public prosecutor could require a bar association or a regional council of legal advisers to submit information concerning the actions undertaken by these bodies after they have been informed about such a violation. What is more, a party to the proceedings, counsel for the defence or a representative, who are absent in the court and thus cause the necessity to defer trial, could be burdened with additional costs of the proceedings resulting from their absence.

Moreover, all persons, including private persons, are obliged to assist Police, public prosecutor's offices and courts in the course of the criminal proceedings. The failure to provide this assistance is punishable by a fine, which could be also imposed on witnesses, court experts and interpreters, and, in exceptional cases, on counsels for the defence or representatives, for unjustified absence in the trial.

### **3. Introduction of changes to the penalty execution code**

The main goal of the reform of the Polish penalty execution code is to enhance the effectiveness of court sentences. The existing provisions, especially those concerning the execution of fines, have a number of disadvantages, leading above all to the lengthiness of the proceedings, their poor effectiveness and unreasonable costs. The projected changes include reduction of the possibility of appealing decisions to the most important cases for defendants, e.g. decisions connected with deprivation of liberty, replacing the principle of attendance of all parties in the hearings by the principle requiring that criminal proceedings are held without the attendance of parties (however exceptions to this principle will be stipulated providing for situations in which parties will have the right to take part in proceedings, usually the proceedings related to deprivation of liberty), the obligation imposed on convicts to cover fixed costs of the execution of penalties of deprivation of liberty or of remand in custody, resignation from imposing a fine as a substitute penalty for imprisonment, imposition on courts of the obligation to include in judgments a substitute penalty of imprisonment in case a convict fails to pay a fine imposed by a court, making the enforcement of sentences of deprivation of liberty more efficient by imposing on the competent local authorities the obligation to direct convicts to certain jobs in appropriate entities.

To sum up, it should be expected that the projected changes would result in minimizing the delays in enforcement of court decisions. Consequently, it would lead to a better functioning of the administration of justice in Poland which is one of the priorities of the current reforms of the Polish criminal justice system.