

**THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS**

**Polish experience**

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## **The European Convention on Human Rights and Fundamental Freedoms - introduction**

The European Convention on Human Rights and Fundamental Freedoms is a real constitutional chart of fundamental civil and political rights and freedoms applicable in the countries - members of the Council of Europe. This document constitutes a common European value for all the European democratic countries establishing the criteria that should be fulfilled by the political systems to be assessed as fully democratic. Through the Convention the European legal order in the area of protection of human rights and fundamental freedoms exists that stipulates not only them but also introduces an effective system to protect them. The Convention is original in this sense that creates supranational control of legal acts and activities of the states that may be commenced by actions taken by the injured party himself.

The European Court of Human Rights is nowadays the only international tribunal where cases can be brought by the individuals after fulfilling stipulated conditions. Right to lodge the application with the Court is the most important element of the system and the basic element of the European legal culture. Through its judgments the Court not only decides in the individual case but also establishes common principles and standards in the aspect of human rights' protection by settlement of the minimal level of protection.

Accession to the Convention means that the State is obliged to respect rights such as the right to life, the prohibition of torture, slavery and forced labour, the right to liberty and security, the right to a fair trial, respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the right to marry, the right to an effective remedy and the prohibition of discrimination

The rights embodied in the Convention applies not only to the citizens of a member - state but to every individual whose right has been injured within the state jurisdiction.

The European Convention on Human Rights constitutes a practical form to certain of the rights and freedoms embodied in the Universal Declaration of Human Rights. It provides a list of guaranteed. The importance of the Convention does not result from the list of rights protected but from the existence of the supervisory system set up to consider alleged violations and ensure that states abide by their treaty obligations. These rights and freedoms must be guaranteed by the State to anyone within their jurisdiction, and not just their own nationals. The Court's judgments are binding on the parties to each case, who are required to take all necessary measures to comply with them. Under Article 54 of the Convention, the Committee of Ministers supervises the execution of

Court judgments. Finally, Article 52 authorises the Secretary General to request parties to explain how their internal law ensures the application of the Convention.

The European Convention on Human Rights has been declared by the member - states (except of Moldavia) to be a part of their internal legal system. Therefore the provisions of the Convention can be a single background to bring an action against the state. The system of protection must subsidiary to the internal solutions of every state. The principle of subsidiarity is one of the fundament of the protection of human rights in Europe.

### **Protection of Human Rights in Poland**

Various projects have been initiated in Poland since the communism collapse in 1989 when to build a civic society. The most important are the legislative acts undertaken by the authorities and official institutions to protect human and civil rights. The Polish Parliament is very sensitive to issues connected with the protection of human rights and this is reflected in its actions. The powers of the Sejm Committee for Justice and Human Rights include issues relating to respect of the law and the rule of law and human rights.

The Sejm, with the approval of the Senate, established the Office of the Human Rights' Defender (ombudsman) - a constitutional body which monitors the protection of the rights and freedoms guaranteed by the Constitution and other normative acts. The Commissioner for the Protection of Civil Rights has a wide range of powers at his disposal that provides him with the means to help individual citizens whose rights have been infringed in any way.

The Constitutional Tribunal monitors Poland's legislation through its formative stages, verifying the conformity of Polish acts of law and regulations and all the international agreements ratified by Poland with the Constitution. It is also the body to which anyone whose rights and freedoms guaranteed by the Constitution have been infringed (Article 79) may submit a complaint.

### **Poland in the Council of Europe**

Poland joined the Council of Europe and ratified the Convention of the Human Rights and Fundamental Rigths on the 26 November 1991. This act has been preceded having fulfilled three statutory requirements of the Council of Europe: the introduction of a system of representative and pluralist democracy, the rule of law, and fundamental human rights and freedoms. Joining this organization had not been possible before as the first elections in Poland after the collapse of the communism in 1989 were not fully free. Poland adopted the European Convention on Human Rights and Fundamental Freedoms and accepted the full system of conventions and judgements of the European

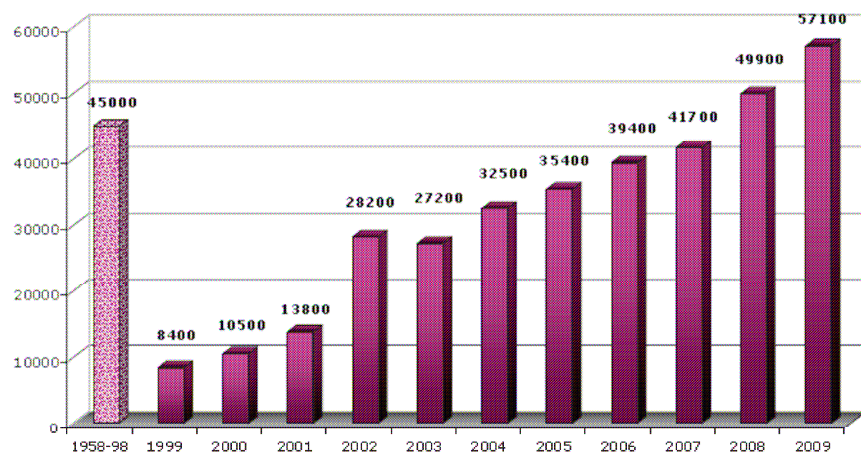
Commission of Human Rights and Court of Human Rights, with the high standards they had developed over the years. Thanks to the ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms Polish citizens have a right to submit individual complaints to the European Court of Human Rights.

**The Court of Human Rights and Poland (data on the 1st January 2010)**

First judgment:	<i>Proszak v. Poland</i> (16 December 1997)
Total number of judgments:	767
Violation judgments:	674
No violation judgments:	46
Other judgments:	47
Inadmissibility decisions:	33,669
Pending applications:	4,727

## Cases before The Court of Human Rights (data on the 1st January 2010)

### Applications allocated to a judicial formation



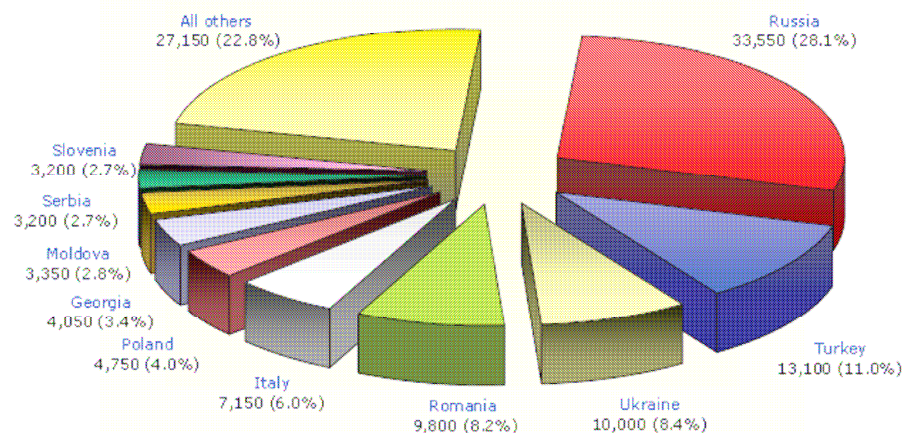
on 1 January 2010

Applications which are allocated to a judicial formation are those for which the Court has received a correctly completed form, accompanied by copies of relevant documents. These applications will be examined by a Committee or by a Chamber of the Court. These figures do not include applications which are at the pre-judicial stage (incomplete case file).

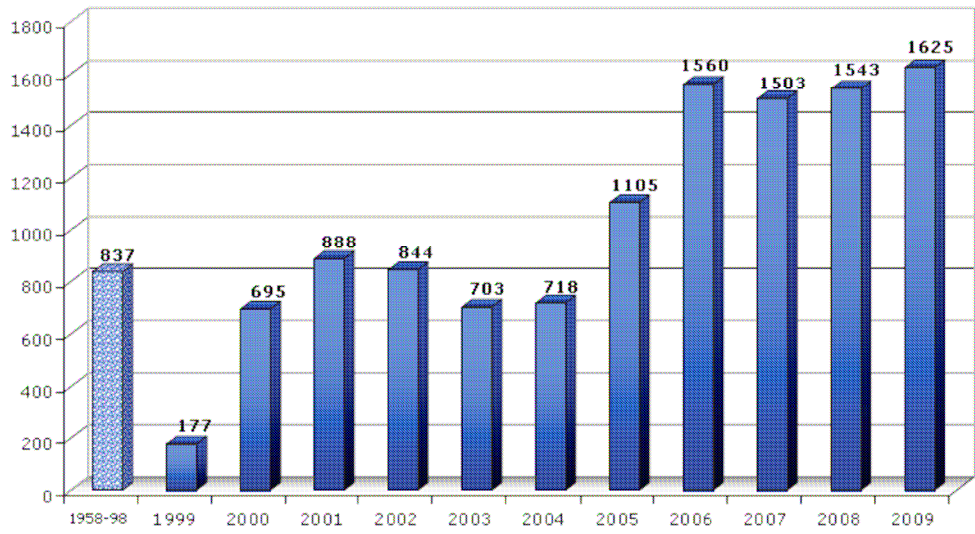
### Pending allocated cases

On 1 January 2010 approximately 119,300 applications were pending before a decision body. More than half of these applications had been lodged against one of four countries: Russia, Turkey, Ukraine or Romania.

on 1 January 2010



## Judgments delivered by the Court



on 1 January 2010

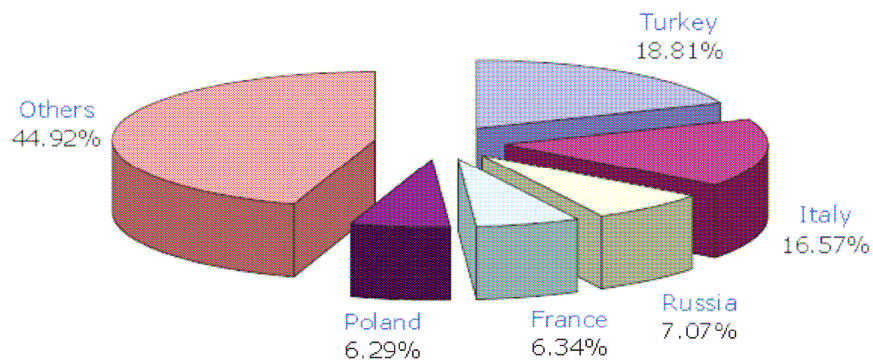
Since the reform of the Convention system on 1 November 1998, there has been a considerable increase in the Court's caseload. Barely ten years after the reform, the Court has delivered its 10,000th judgment. Its output is such that more than 90% of the Court's judgments since its creation in 1959 have been delivered between 1998 and 2009.

In recent years the Court has concentrated on examining complex cases and has decided to join certain applications which raise similar legal questions so that it can consider them jointly. Thus, although the number of judgments delivered each year is not increasing as rapidly as in the past, the Court has examined more applications.

## Violation judgments by State

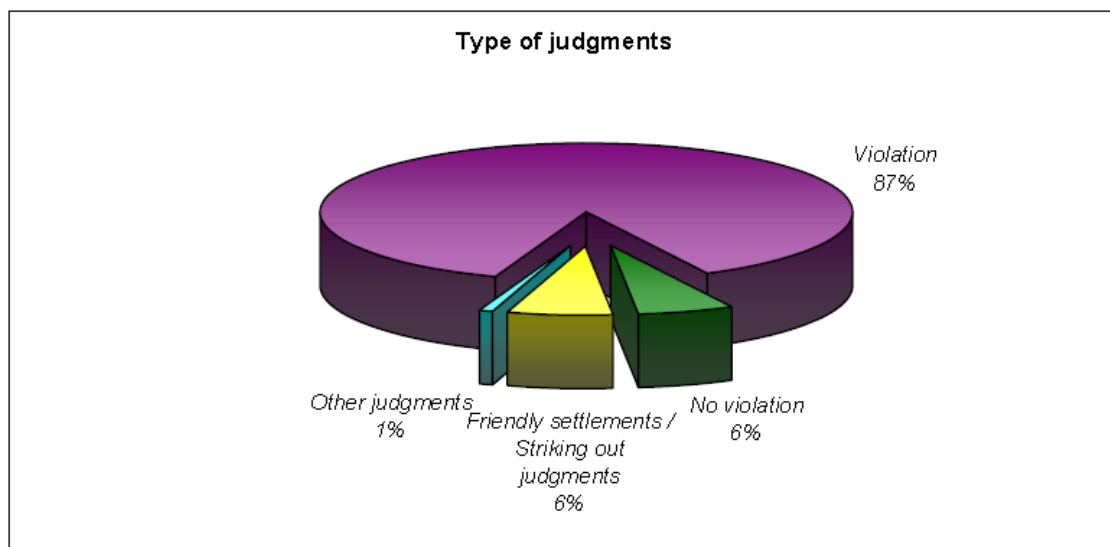
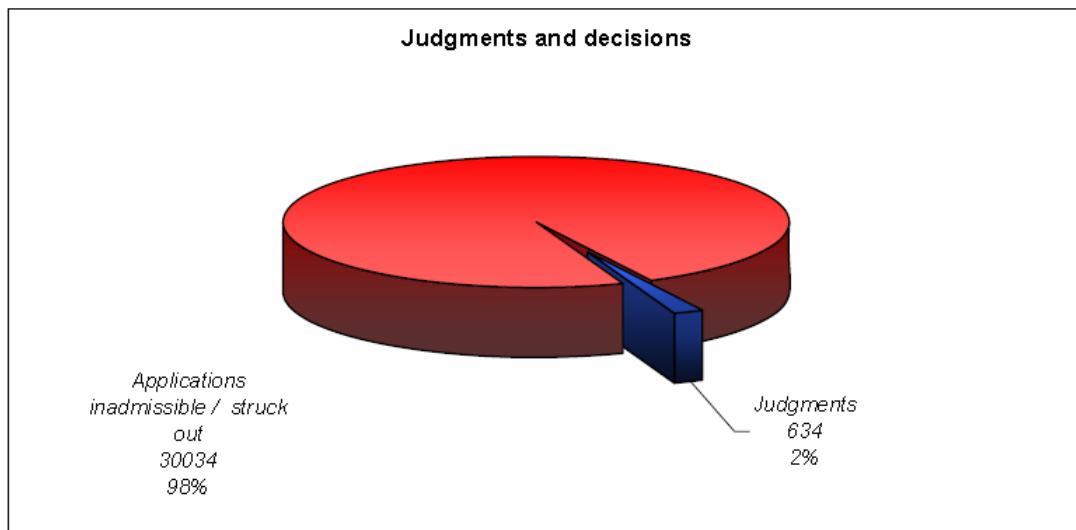
1959-2009

on 1 January 2010

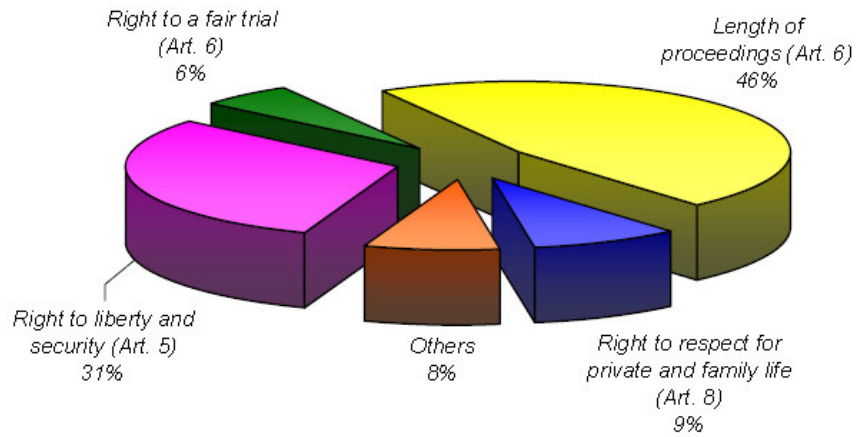


More than half of the judgments delivered by the Court concerned four of the Council of Europe's 47 member States: Turkey (2,295 judgments), Italy (2,021 judgments), Russia (862 judgments) and France (773 judgments). Of the total number of judgments it has delivered since it was established in 1959, in over 83% of cases the Court has found at least one violation of the Convention by the respondent State.

## Statistics for Poland on 1<sup>st</sup> January 2009

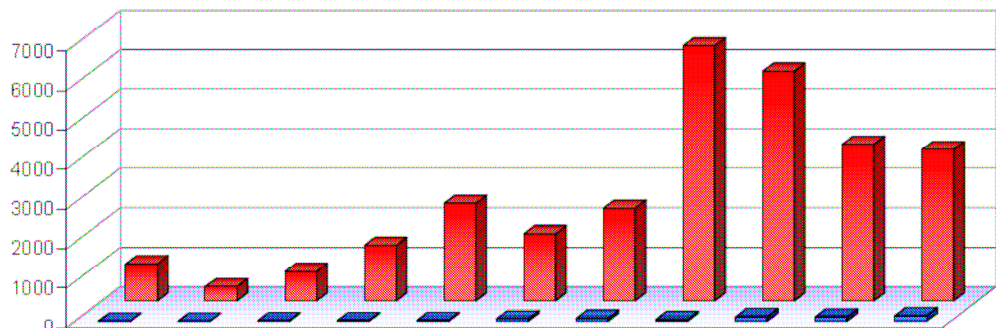


### Subject-matter of violation judgments



Statistics for Poland on 1 January 2009

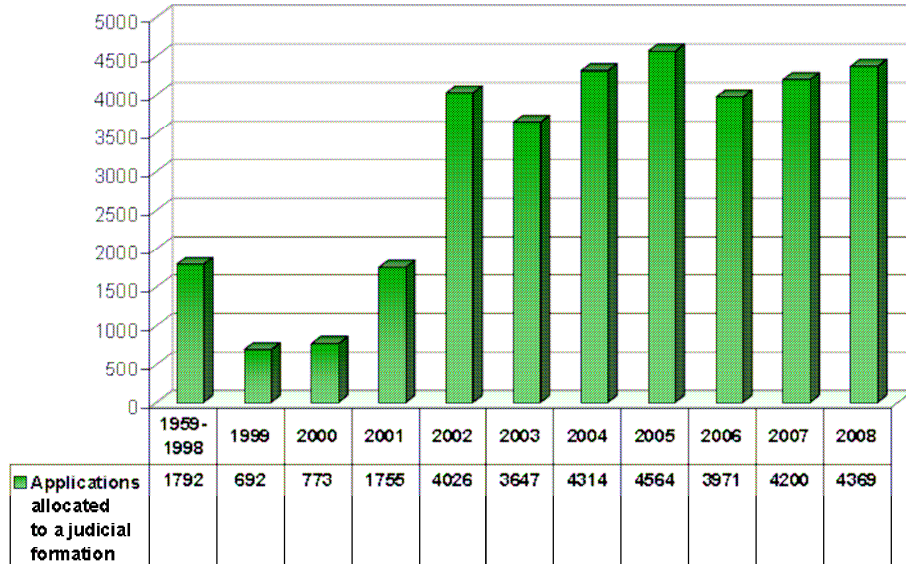
### Decisions and judgments



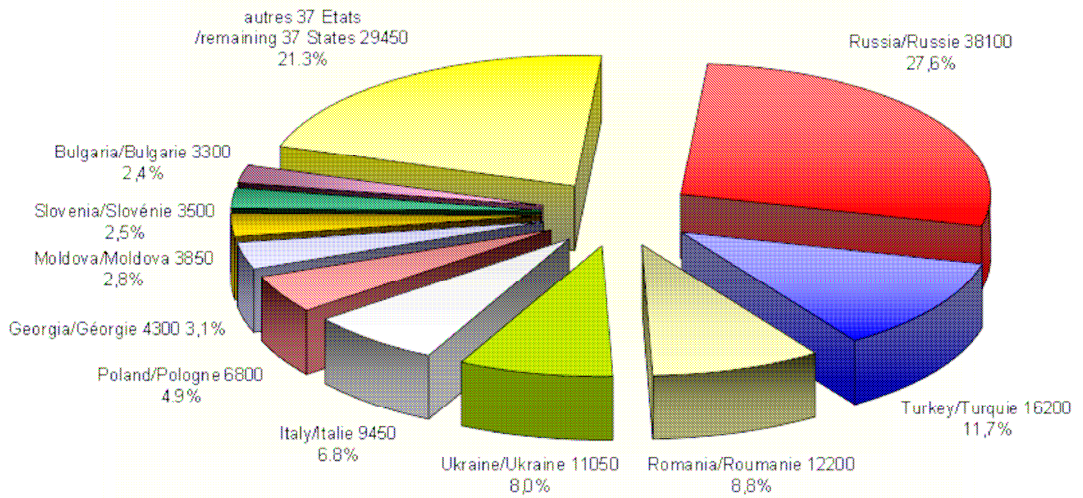
	1959-1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Judgments	4	3	19	20	26	67	79	49	115	111	141
Applications inadmissible or struck out	937	358	741	1411	2469	1702	2344	6465	5816	3966	3825



**Applications allocated to a judicial formation**



**PENDING APPLICATIONS ALLOCATED TO A JUDICIAL FORMATION  
REQUÊTES PENDANTES DEVANT UNE FORMATION JUDICIAIRE  
31/08/2010**



**Total number of pending applications: 138,200  
Nombre total des requêtes pendantes : 138 200**



# Violations by article and by country 1959-2009

on 1 January 2010

1959-2009	Total number of judgments	Other Article of the Convention													P7-4																															
		Total	2	3	3	3	4	5	6	6	7	8	9	10		11	12	13	14	P1-1	P1-2	P1-3																								
Moldova	168	158	1	2	7													46	90	10			7	16	6		27			70			1		9											
Monaco	1																	1																												
Montenegro	1																																													
Netherlands	124	71	27	15	11													21	21	1	1			4					1	3																
Norway	27	20	7															1	9	2	1			3	5																					
Poland	767	674	46	40	7	2												237	58	360			71	13					18	2	18															
Portugal	187	123	5	56	3													2	16	71			3	9					1	1	26															
Romania	648	584	18	23	28	1												45	304	62			35	9					8	22	373															
Russia	862	815	28	13	6	115	122	18	193	34								265	475	112			34	4	16				6	178	2	336			1		2		66							
San Marino	11	8		2	1														7		2																									
Serbia	40	37	2	1															4	12	16			7	4																					
Slovakia	207	178	5	21	3	1												15	17	157			11	5																						
Slovenia	227	217	7	3														2	2	209			2																							
Spear	78	50	24	2	2													3	24	11			2	6	2																					
Sweden	89	43	20	23	3	1													2	25	11			6	2																					
Switzerland	91	63	21	5	2	1													11	22	1			11	1																					
The former Yugoslav Republic of Macedonia*	63	58	3	2															3	11	40																									
Turkey	2295	2017	46	204	26	76	129	24	175	74								436	657	357			4	69	1					162	39					209			3	544	4	5	29			
Ukraine	608	602	3	2	1	2	6	1	31	10								49	396	133			16	16	4	1																				
United Kingdom	422	257	79	65	21	2	12		13									58	87	24				1	10	3																				
Sub Total	10156	687	1047	318	217	304	56	607	190	1	1629	3207	4008	21	662	30	352	98	4	1187	152	2215	9	39	8	175																				
Total																																														

\* Ten judgments concern the countries: France & Spain, Turkey & Denmark, Moldova & Russia, Georgia & Russia, Romania & Hungary, Romania & United Kingdom, Romania & France, Hungary & Italy, Albania & Italy and Montenegro & Serbia

Table 2 Allocated applications by Defending State and population

State	Applications allocated to a judicial formation				Population (1000)				Allocated/population (10000)			
	2006	2007	2008	2009	1.1.2006	1.1.2007	1.1.2008	1.1.2009	2006	2007	2008	2009
Albania	52	55	75	99	3127	3153	3170	3169	0,17	0,17	0,24	0,31
Andorra	8	4	1	6	75	80	83	87	1,07	0,50	0,12	0,69
Armenia	98	614	106	125	3216	3226	3230	3090	0,30	1,90	0,33	0,40
Austria	344	329	373	410	8266	8299	8332	8357	0,42	0,40	0,45	0,49
Azerbaijan	221	708	334	361	8388	8533	8630	8934	0,26	0,83	0,39	0,40
Belgium	107	122	166	256	10511	10585	10670	10741	0,10	0,12	0,16	0,24
Bosnia and Herzegovina	243	705	971	621	3842	3884	3843	3760	0,63	1,82	2,53	1,65
Bulgaria	748	818	890	1194	7719	7679	7640	7602	0,97	1,07	1,16	1,57
Croatia	640	558	608	755	4443	4441	4435	4432	1,44	1,26	1,37	1,70
Cyprus	56	63	66	59	766	779	795	802	0,73	0,81	0,83	0,74
Czech Republic	2466	806	721	726	10251	10287	10381	10475	2,41	0,78	0,69	0,69
Denmark	68	45	73	63	5427	5447	5476	5519	0,13	0,08	0,13	0,11
Estonia	184	153	169	204	1345	1342	1341	1340	1,37	1,14	1,26	1,52
Finland	262	268	276	489	5256	5277	5301	5325	0,50	0,51	0,52	0,92
France	1831	1553	2724	1589	62886	63392	63753	64105	0,29	0,24	0,43	0,25
Georgia	105	162	1771	2122	4361	4400	4382	4219	0,24	0,37	4,04	5,03
Germany	1601	1483	1572	1515	82438	82315	82222	82062	0,19	0,18	0,19	0,18
Greece	371	384	416	518	11125	11172	11215	11263	0,33	0,34	0,37	0,46
Hungary	423	529	425	449	10077	10066	10045	10030	0,42	0,53	0,42	0,45
Iceland	12	9	7	10	300	308	314	321	0,40	0,29	0,22	0,31
Ireland	40	45	48	62	4209	4315	4420	4518	0,10	0,10	0,11	0,14
Italy	931	1353	1824	3624	58752	59131	59618	60090	0,16	0,23	0,31	0,60
Latvia	268	232	248	326	2295	2281	2271	2261	1,17	1,02	1,09	1,44
Liechtenstein	1	5	8	14	35	35	35	36	0,29	1,42	2,26	3,92
Lithuania	204	226	255	261	3403	3385	3366	3350	0,60	0,67	0,76	0,78
Luxemburg	32	34	35	29	460	476	484	492	0,70	0,71	0,72	0,59
Malta	16	18	12	14	404	408	411	413	0,40	0,44	0,29	0,34
Moldova	517	889	1147	1322	3604	3581	3573	3576	1,43	2,48	3,21	3,70
Monaco	4	10	5	9	32	32	32	33	1,25	3,13	1,56	2,73
Montenegro	13	95	156	269	-	651	628	626	-	1,46	2,49	4,30
Netherlands	397	366	385	500	16334	16358	16404	16481	0,24	0,22	0,23	0,30
Norway	70	63	79	79	4640	4681	4737	4801	0,15	0,13	0,17	0,16
Poland	3975	4202	4369	4986	38157	38126	38116	38130	1,04	1,10	1,15	1,31
Portugal	215	134	151	152	10570	10599	10618	10632	0,20	0,13	0,14	0,14
Romania	3310	3168	5242	5260	21610	21565	21529	21497	1,53	1,47	2,43	2,45
Russia	10132	9493	10146	13666	143821	142221	142009	140367	0,70	0,67	0,71	0,97
San Marino	2	1	4	2	29	32	31	32	0,69	0,32	1,30	0,63
Serbia	595	1056	1067	1576	8118	7398	7374	9856	0,75	1,43	1,45	1,60
Slovak Republic	487	349	488	569	5389	5394	5401	5411	0,90	0,65	0,90	1,05
Slovenia	1338	1012	1353	598	2003	2010	2026	2053	6,68	5,03	6,68	2,91
Spain	361	310	393	641	43758	44475	45283	45853	0,08	0,07	0,09	0,14
Sweden	371	361	317	367	9048	9113	9183	9259	0,41	0,40	0,35	0,40
Switzerland	282	237	261	471	7459	7509	7591	7668	0,38	0,32	0,34	0,61
The former Yugoslav Republic of Macedonia	295	453	395	489	2032	2042	2045	2049	1,45	2,22	1,93	2,39
Turkey	2328	2828	3706	4474	72520	69689	70586	71517	0,32	0,41	0,53	0,63
Ukraine	2482	4499	4770	4693	47075	46466	46373	45433	0,53	0,97	1,03	1,03
United Kingdom	843	860	1253	1133	60393	60853	61186	61612	0,14	0,14	0,20	0,18

SOURCES 2009: Internetsites of the Eurostat service ("Population and social conditions") or from the United Nations Statistics Division.

## **Examples of judgements against Poland**

### **Kudła v. Poland (26 October 2000)**

Andrzej Kudła was charged with fraud and forgery and detained on remand in 1991. On more than 70 occasions, he requested to be released or appealed against decisions to hold him in detention. He complained, among other things, that the criminal proceedings against him had lasted an unreasonably long time and that he had had no effective domestic remedy available to challenge their length. The Court observed in particular that the applicant had had no remedy in Polish law whereby he could have enforced his right to a "hearing within a reasonable time".

- *no violation of Article 3 (prohibition of inhuman or degrading treatment)*
- *violation of Article 5 § 3 (right to trial within a reasonable time or release pending trial)*
- *violation of Article 6 § 1 (right to a hearing within a reasonable time)*
- *violation of Article 13 (right to an effective remedy)*

### **Broniowski v. Poland (22 June 2004)**

The case concerned the fact that the Polish State had not taken any measures to compensate those who had been repatriated from the "territories beyond the Bug River" after the Second World War and had had to abandon property there. According to the Polish Government, the total number of persons potentially entitled to such measures was estimated at about 80,000. The Court noted the existence of a systemic problem connected with the malfunctioning of domestic legislation and practice. It called upon the Polish authorities to take the necessary measures to secure the property right in question in respect of the remaining Bug River claimants.

- *violation of Article 1 of Protocol No. 1 (protection of property)*

### **Hutten-Czapska v. Poland (19 June 2006)**

The applicant was one of around 100,000 landlords in Poland affected by a restrictive system of rent control (from which some 600,000 to 900,000 tenants benefited), which originated in laws passed under the former communist regime. The system imposed a number of restrictions on landlords' rights, in particular setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit. The Court noted the existence of a systemic problem connected with the malfunctioning of Polish legislation in that it had imposed, and continued to impose,

restrictions on landlords' rights and had not, and still did not, provide for any procedure or mechanism enabling landlords to recover losses incurred in connection with property maintenance. It held that Poland had to secure in its domestic legal order, through appropriate legal and/or other measures, a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community.

- *violation of Article 1 of Protocol No. 1 (protection of property)*

***Matyjek v. Poland (24 April 2007)***

This was the Court's first judgment in a case concerning "lustration proceedings" in Poland, which are aimed at exposing persons who worked for or collaborated with the State's security services during the communist period. Tadeusz Matyjek, who had been a member of the Polish Parliament (*Sejm*), complained that the lustration proceedings against him had been unfair. He particularly referred to their unequal and secret nature, document confidentiality and the unfair rules governing access to files.

- *violation of Article 6 (right to a fair trial)*

***Bączkowski and Others v. Poland (3 May 2007)***

The applicants were the Foundation for Equality (Fundacja Równości) and five of its members, who were also members of non-governmental organisations campaigning on behalf of homosexuals. They complained, among other things, that the mayor of Warsaw had refused them permission to march through the city's streets as part of a campaign called "Equality Days".

- *violation of Article 11 (freedom of assembly and association)*
- *violation of Article 13 (right to an effective remedy)*
- *violation of Article 14 (prohibition of discrimination)*