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Background

Poland is a CEE country with population of 38.43 million and GDP per capita of 16180 USD (31430 USD PPP), which locates it at 54th position in the world (43rd in the world PPP), and HDI of 0.865 (33rd in the world). It has a market economy with strong links to global markets and has been a member of European Union since May 1st, 2004.

Poland's political system is constitutional democracy with some leanings towards illiberal democracy in the recent years. The legal system is of continental civil law type. Within the post-1989 transition to democracy, complete reconstruction of the legal system occurred, which removed most remnants of the previous communist legal system. Whilst the court system somewhat resembles the earlier scheme with two separate branches – common courts and administrative courts – and a Constitutional Tribunal, after 1989 it underwent heavy structural, infrastructural and personal changes. Both the court system as a whole and individual justices are burdened with extreme workloads, with 15.05 million new cases in 2018 (Table 1). This might be considered single most important factor shaping the functioning of judiciary and the necessity to provide timely adjudication being frequently stressed in public debate and policies.

Criminal²	Civil³	Family	Labour	Social security	Business
2321762	7472787	1321331	127926	173513	1661631

Table 1: New cases in 2018 in Polish courts by type

Arguably, both communist legacy and current politics are yet somewhat relevant for dispute resolution and legal aid schemes in Poland. Communist legal doctrines did not support such systems on the grounds that under communism legal authorities proactively support citizens' in their legal issues. This was reflected in establishing institutions that were supposed to fulfil mixed duties, involving both authoritative control of legality and legal advice, such as the labour inspection and

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2 Including petty offences

3 Excluding land register cases, including admonition cases

the prosecutor's office (prokuratura). In reality the advice function was considered at best secondary, and today plays a role only in some such institutions.

Another element of both communist and continental legal system, relevant for legal aid in Poland are leanings towards inquisitorialism in court procedures. Whilst ebb and flow of reforms of court procedures can be observed, in principle the courts are supposed to provide certain orientation to self-represented litigants. Given said heavy workloads of courts and high expectations of justices' neutrality towards parties, it is unlikely that this function is in fact achieved. Participants of court proceedings are thus heavily reliant on commercial and – to lesser extent – unpaid legal aid. Some basic functions of aiding navigation in the court system were entrusted with courts' client service centers (BOI), but these do not provide legal advice or information.

Alternative dispute resolution is not a popular option in Poland, despite fairly inviting legal regulation and established infrastructure of mediation. Whilst in the recent years, in all types of disputes, prevalence of mediation has been increasing, its overall contribution towards resolving legal disputes is minimal. In 2017, in 8018 civil cases there was an attempt of court mediation and in 5699 family cases mediation was completed. Statistics of out-of-court mediation is not available, but there isn't a reason to think that it is widely practiced. Both phenomena might have socio-cultural explanations.

Despite these adverse circumstances, legal aid has recently entered the agenda of mainstream politics. Establishing a legal aid scheme has been part of the program of the liberal-conservative government ruling until 2015, as expressed by high-level political rhetoric and initiatives, including establishment of out-of-court legal aid scheme in 2015. The interest is continued by current government in line with its general and highly controversial activity in the field of justice. Particularly vivid interest has been expressed by the President of the Republic, who has made the issue one of the elements of his electoral campaign and initiated the reform of out-of-court legal aid system in 2018.

As of April 2019, two separate schemes of legal aid exist in Poland along with variety of independent and uncoordinated initiatives to deliver legal aid and legal information. The first scheme is the court-operated, narrow and limited representation service. The second scheme is the wide and easily accessible out-of court legal advice system. The latter is supplemented by many independent initiatives to provide advice, undertaken by both public and non-public entities.

1. Primary legal aid

Not unlike other countries that underwent a transition from communism to a democracy, after the collapse of authoritarian regime Poland did not have a primary legal aid system. For years, the necessity to provide citizens with unpaid scheme has been a topic of public debate perpetuated by activists' solicitation. These efforts were long unsuccessful, with expected high cost of such a scheme being cited as an important obstacle. A major breakthrough came only in 2015 when a law on „unpaid legal advice and public legal education” was enacted by then-ruling liberal-conservative coalition, establishing an out of court legal aid system effective 1 January 2016. Fears regarding possible high cost and potential negative impact of the scheme on legal services market still reverberated, leading to radical decisions to curb its scope and functioning. This in turn has led to system's many dysfunctions. Following widespread criticism, the system underwent significant overhaul only three years later under the rule of current conservative-populist government.

This report first discusses the state of affairs under previous law and then turns to system's new version.

a. Before 1 January 2019

Provision of aid was entrusted to extensive network of legal aid offices. The system comprised 1525 such offices distributed evenly across the country following population density (one office per 25000 inhabitants). Offices were managed by all 380 powiats – middle range local self-government entities, comprising rural areas, towns and cities. Powiats were responsible for providing rooms and equipment to offices using funds from government subsidies. System budget was capped at 94,18 mln PLN (approx. 21,95 mln EUR) and indexed yearly in a 10-year budget programming system, to reach 116,02 mln PLN (27,04 mln EUR in 2016 exchange rate) in 2025. Indirect costs were fixed as 3% of the subsidy.

Aid was provided by two types of providers: members of the two Polish bar associations: advocates and legal advisers, and NGOs employing legal advisers or paralegals meeting established criteria. In the former case, advisers were selected on random basis from those bar members who volunteered to work in the system. In the latter, competitive public tenders were organized by powiats, which used scoring mechanisms to evaluate price, proposed advice programmes and NGOs potential.

Only limited types of service were provided. Beneficiaries could obtain legal advice and information. Aid providers could also prepare draft motions to start legal proceedings for beneficiaries if the case required that. Other types of legal drafting were not provided, nor was representation (including representation before administrative bodies) and alternative dispute

resolution mechanisms. Mode of delivery was stationary, the system provided no distance or electronic mode of contact with aid providers, established no method of information delivery and excluded the possibility of outreach service. Neither referral nor triage system were created to provide integrated social services.

The most controversial aspect of the system before 2019 were eligibility criteria. Only few, narrow categories of individuals were eligible to obtain advice and the law had no obvious substantial objective. The list included persons under 26 years of age and over 65 years of age, war veterans and combatants, persons who were found eligible for receiving social aid, victims of natural disasters and catastrophies, holders of „large family cards” (persons having the custody over 3 or more children) and pregnant women (but only on issues related to pregnancy and maternity). These criteria resulted from a concern that the necessity to verify eligibility might be burdensome for public administration, compared with relatively simple nature of advice. To avoid this, the entitlement to receive aid was awarded only to those types of individuals, whose status could easily be determined on the basis of commonly issued documents.

All in all, approximately 30% of adult population was covered by the scheme and idiosyncratic eligibility criteria turned out to be highly dysfunctional. While persons clearly in need of legal advice, such as the homeless, the unemployed and persons with disabilities were denied advice, some better-off groups, like retirees with good income, could use the system. Importantly, no coordination whatsoever was provided with mechanisms of secondary legal aid (awarded by courts). This might have led to situations when aid has been discontinued after the case reached court level, or refusal to award access to aid in the out-of-court system combined with such awards in courts. No systematic evidence of such dysfunctions is yet available.

The system proved to be grossly ineffective. According to data gathered by Ministry of Justice, in the years 2016 and 2017 approx. 442417 and 456355 instances of advice took place, in the benefit of, respectively, 379521 and 388733 individuals. While scale of utilisation of individual offices varies, on the average said numbers translate into less than 1 person per day per office. In money terms, due to fixed budgeting and remuneration of aid providers on hourly basis regardless of the number of clients served, cost of single episode of advice turned out to be much higher than expected, coming to 212,86 PLN in 2016 and 207,62 PLN in 2017, instead of 63 PLN as planned.

Most of service was utilised by persons under 26 and over 65 (more than 70% of all users in 2016 and 2017). The most prevalent topics of advice were civil law (except property law and inheritance) (28,9%, of all instances of advice), inheritance (17%), property law (12,8%) and family law (including alimony and divorce) (22,5%). Most advice was simple – in about 50% of

instances of advice delivery, duration of advice session was below 30 minutes, and in less than 14% instances of advice clients were helped in preparing a legal document.

Reasons for limited utilisation of the system are likely to be complex, but single most important factor contributing to it was flawed regulation of eligibility criteria. Not without consequences were also limited types of service provided and conservative channels of its delivery. This notwithstanding, establishment of the system in 2015 brought major changes in state policies and decisionmakers' understanding of the issue of access to justice.

b. After 1 January 2019

Following widespread criticism of the original system, significant changes were introduced in 2018, effective 1 January 2019. The structure of the system with 1525 offices was preserved, and so was financing scheme and duties imposed on powiats. Budget remained unchanged compared to initial plans, but following demands of powiat authorities indirect costs were increased to 7%.

Two new types of advice providers were introduced, along with new types of service. Mediators are to provide mediation service and NGOs specializing in citizens' advice are expected to deliver citizens advice. Altogether, 4 types of service providers are currently involved with the system. Certain elements of outreach service are now permissible, and a basic mechanism of referrals to social service providers has been introduced. Powiats were made responsible for providing legal education to citizens, and part of the increased indirect funding is supposed to be used towards this end.

The biggest change pertains to eligibility criteria. Previous limitations were abolished and now the system is effectively available to anyone (upon a declaration that the beneficiary is unable to cover the expenses himself).

Whilst many changes could be applauded, it is too early to say if new law becomes more effective than the old one. It is clear that some of the hitherto deficits remain. The system is still not sufficiently coupled with other public services, particularly legal aid outside the system and secondary legal aid. Referrals system is limited, and despite introduction of outreach service elements, distance advice and information is not available.

Largely unaddressed remain the issues of legal information and legal education. Whilst under new law some funds are allocated towards legal education needs, justified fears exist that its implementation will not be highly effective because of limited competence in these matters available to powiats. No statewide programme of legal education has been created, nor is there a public body responsible to provide one.

2. Primary legal aid outside the system

Despite establishment of a new primary legal aid system, after 2015 multiple hitherto channels of service delivery were not liquidated. These include range of public and private service providers and aid types, and overall still deliver significant amount of service, particularly in the specialized fields. As of April 2019, no official plans are known as to abolishing these schemes or their merging with legal advice system.

Providers of primary aid outside of the system can be divided into three groups – public bodies, whose traditions of providing specialized legal advice long predate establishment of the system and who continue to deliver it, NGOs specializing in providing advice to select categories of beneficiaries with special needs (like victims or immigrants) and NGOs offering general advice. Introduction of the system changed the situation for all of them, but generalists are the most affected, often facing extinction of hitherto funding opportunities and the need to restructure their operations or competing for funding under the new scheme. This turned out to be particularly problematic for some such organizations due to the limitations of the state scheme, forcing them to restructure their advice programmes on new assumptions.

Parallel provision of aid by different providers is at the same time informative for a study of demand creation and management. Establishment of independent advice schemes clearly resulted from state's prolonged disregard for the issue of legal aid, which incentivised NGOs to seek independent remedies and funding schemes. This has led to establishment of demand for independent legal service and pathways of resolving legal problems. Introduction of the new system in 2015 (effective 2016) could be seen as a natural experiment with redirecting demand for legal aid and related services to new providers.

Institution	Type of advice	Statistical category	Number of advice instances or applications for advice				Change % ⁴
			2014	2015	2016	2017	
State Labour Inspection	Labour law	Number of instances of advice in Labour Inspection's offices and in the course of on-site inspections	939000	1043400	994500	906300	-4,12
		Number of instances of advice in Labour Inspection's offices only	725000	408400	400200	510500	-19,64
Organizational units of social aid and integration	Family law, social law	Number of families provided with specialised service (legal aid, psychological aid, family advice) ⁵	138823	132097	113596	108557	-18,00
Powiat Consumer Ombudsmen	Consumer law (generally)	Number of instances of advice	493639	500978	494878	nd	-0,49
Patients' Rights Ombudsman	Health law	Number of registered motions	65339	71366	68832	61218	-4,87
Psychiatric Patients' Rights' Ombudsman	Health law in psychiatry	Number of complaints and motions	nd	9492	8212	5257	-29,05
Ombudsman	Human rights	New cases accepted	26470	27376	24360	22800	-12,42
Children's Rights Ombudsman	Children's rights	New cases filed	48818	49674	46213	39182	-13,30
University Law Clinics associated with FUPP	General	New cases accepted ⁶	11181	10693	8424	6531	-31,63
Financial Inspector ⁷	Consumer law (financial market)	Number of motions to intervene	n/a	11953 ⁸	16997	18803	n/a
Citizens Advice Bureaux associated with ZBPO	General	Number of instances of advice ⁹	38835	36420	24449	19996	-40,94
Consumer Federation (a NGO funded by UOKiK ¹⁰)	Consumer law (generally)	Number of instances of advice	56645	61262	63515	64772	8,80
Consumer infoline (funded by UOKiK)	Consumer law (generally)	Number of instances of advice	89712 ¹¹	70330	38450 ¹²	72021	2,4
Consumer e-mail response center (funded by UOKiK)	Consumer law (generally)	Number of instances of advice	25565	19200	22245	21050	-3,28
Family violence victims' support centres (funded by National Programme of Victim Support)	Criminal law, social law	Number of persons receiving advice	41500	42987	34778	34648	-17,82

Table 2: Legal aid outside legal aid system, changes 2014-2017¹³.

As Table 2 shows, after 2016 nearly all providers outside the system experienced diminished demand for their services. These changes were the most profound in entities whose service came closest in form and mechanism of delivery to those in the public scheme, but have not resulted in shutting any of these services. Table informs that large portions of demand for out-of court legal advice are still served in the hitherto schemes. This experience suggests that increase in supply of

4 Change is calculated as change in averages for the two years preceding and following introduction of legal aid scheme in 2016.

5 The number refers to both legal aid and other specialist service

6 The data refers to academic years, not calendar years, respectively: 2013/2014, 2014/2015, 2015/2016, 2016/2017.

7 Authority overseeing consumer rights in financial markets.

8 Including 11612 motions from the insurance market and 341 – financial market. In the latter the Financial Inspector started its activity on 11 October 2015 r.

9 In 2014 and 2015 there were 25 offices in the network, in 2016 – 19, in 2017 – 17.

10 Authority protecting market competition and consumer rights.

11 „Number of phone calls received”.

12 In 2016 funding reduced by 30% compared to 2015 and 2017.

13 Source: J. Winczorek, Dostęp do prawa. Ujęcie socjologiczne, Scholar, Warszawa 2019, p. 279 using data from reports by aid providers.

service does not, at least in short term, lead to rapid increase in demand for such service, nor does it result in transferring of all demand to new providers.

3. Secondary legal aid

Secondary legal aid in Poland remains strongly rooted in the continental tradition of court-governed, decentralized *judicare*. Representation, which is completely free of charge to beneficiaries, is provided by members of bar associations: advocates and legal advisers who volunteer to be listed as practitioners interested in *ex-officio* work. They are remunerated according to fixed-fee system, determined by Minister of Justice.

The system is highly decentralised. No central body exists to coordinate provision of secondary legal aid, and criteria of awarding it – albeit in principle based on both merits and financial tests – are somewhat different in different court procedures. It is also reasonable to believe that the common standards of granting aid are interpreted by courts on case-by-case basis, leading to inconsistencies. In any case, formulation of eligibility leaves much space for courts' discretion.

In criminal cases, the procedure is in principle regulated by sec. 78 of Code of Criminal Procedure which underwent some changes in the recent years. It stipulates that representation is awarded to the accused if s/he, „duly demonstrates that he is unable to bear the costs of defence without damage to the necessary maintenance of himself or his family”. Other than that, unpaid representation must be provided regardless of the accused's financial standing in a number of situations: when the s/he is charged with a felony before District Court, in some cases of psychosocial and sensory disability and when the accused's ability to control her/his own actions appears questionable, when the s/he is juvenile, and when the court finds doing so necessary due to complication of the case. As a consequence, in practice unpaid legal advice is not available to all accused in all cases, and is not available to suspects at the early stages of criminal prosecution.

This regulation runs counter to EU directives and European Court's of Human Rights jurisprudence and so is questionable from the perspective of human rights protection. Despite this, in the last decade only limited and ineffective reforms were undertaken to expand aid's availability. In 2015, an amendment of Code of Criminal Procedure was enacted, according to which unpaid legal representation was to be available to all defendants upon their request, under the condition that if a conviction takes place, the costs of defence are to be recovered from beneficiaries. Even this limited reform was abolished after the 2015 elections and before it effectively came into force, so its effects on availability of legal aid in criminal cases cannot be determined. Another important

regression post-2015 is related to the change in wording of sec. 78 with occurred in the same amendment, as a result of which only the accused (not the suspect) is eligible to receive aid.

In civil cases, legal aid is available under sec. 117 of Code of Civil Procedure to all types of litigants (including legal persons) if they are exempted from paying court fees (fully or in part). Also litigants who were not exempted may apply by filling a motion stating that they „are unable to cover attorney fees without damage to the necessary maintenance of themselves or their family’ (natural persons) or if they prove that they „do not have sufficient funds to cover attorney fees” (legal persons). Decisions to grant representation in this procedure also extend to exemption of court fees.

Motions to award representation might be filed orally during hearings or using a form, which requires applicants to disclose details of their economic situation, including family status, income and property. These statements are subject to evaluation by court. Apart from that, merits test is conducted. The court only awards unpaid representation if it finds that presence of attorney „is needed”. Standards of „need” are not determined by law and may include different circumstances of the case and applicant’s personal situation.

Apart from criminal and civil matters, legal aid is available in administrative cases, cross-border disputes and proceedings before Constitutional Tribunal. In administrative cases representation is regulated by sec. 246 of Law on Procedure before Administrative Courts. Under it, aid is only available before courts (not administrative bodies), both to natural persons and legal persons. Eligibility criteria, tests and procedures are similar to those in civil cases. Also before the Constitutional Tribunal rules of civil procedure are to be applied accordingly.

Due to decentralised nature of the scheme and imperfections of court statistics, data on number of cases where secondary legal aid was awarded is very limited. Table 3 compiles available data for the years 2013-2017. Numbers for civil cases represent instances when representation was awarded, and numbers for criminal cases – numbers of applications to grant such aid. Success ratios are not known, nor is data for administrative procedures. Juxtaposed with numbers of incoming cases, this statistics suggest that in Poland availability of unpaid representation is low.

	Year				
	2013	2014	2015	2016	2017
Civil cases	11025	10420	10906	11708	11600
Criminal cases	58472	56191	47218	46674	48592

Table 3: Secondary legal aid in civil and criminal cases in Poland

3. Financing legal aid

Financing mechanisms of legal aid is different in both schemes. In the system of primary legal aid separate budget exists, as established by law establishing the system. In 2019 the allocated expense comes to 101 mln PLN, which translates into 0,61 EUR per capita. Due to specificity of the financing system based on hourly fees for availability, this also comes close to the amount actually spent on primary legal system. Amounts spent on independent suppliers of legal aid outside of state-funded scheme are hard to calculate.

Secondary legal aid is financed from general budget for courts, but due to financing methodology only rough estimates of amounts spent are known without specialized study. Table 4 indicated amounts allocated to legal aid under the budgetary scheme “18.3.1.6. Access to courts, including organization of the system and delivery of unpaid legal advice at the stage of court proceedings (ex-officio defense)”, which includes legal aid but also expense on Court Clients’ Information Offices and other related expenses. Moreover, the increase of allocated funding after 2015 may be an indication of expected spending as a result of the abovementioned amendment of code of criminal procedure (which was later reversed), not actual increase in aid availability and increase in spending.

	Total budget allocated to legal aid and system organization			Cost of secondary legal aid in criminal and civil matters as percentage of expense of civic and criminal procedures	Spending on primary legal aid system		
	Thousands PLN	Thousands EUR	EUR per capita	Percent	Thousands PLN	Thousands EUR	EUR per capita
2015	221284	51461	1,34	13,7	na	na	na
2016	362034	82093	2,13	17,35	94183	21954	0,57
2017	368938	83659	2,17	18 (prognosed)	96161	21805	0,56
2018	nd	nd	nd	nd	98565	23637	0,62
2019	nd	nd	nd	na	100931	23472	0,61

Table 4: Financing of legal aid in Poland

As rough as these estimates are, the amounts stated in Table 4 indicate that the expense is still much lower than budgets allocated to legal aid in most developed nations, even if purchase power parity is taken into account. Spending on legal aid is also distributed between primary and secondary legal aid in a peculiar proportion. In jurisdictions running mature legal aid systems (like the Netherlands or England and Wales), spending on secondary legal aid is proportionally much higher than

spending on primary legal aid. This may suggest that secondary legal aid in Poland is underfinanced or that access to it is limited.

Conclusion

In the recent years the situation of legal aid in Poland has been inconsistent. On one hand, establishment of the new legal aid scheme is a major breakthrough in aid availability and decisionmakers' thinking about that issue. On the other hand, changes were not systematic enough and quickly turned out to be highly ineffective, revealing the necessity of more careful, evidence-based policy development. Most interestingly, and contrary to commonly expressed fears, primary legal aid in Poland turned out to suffer from problems of abundance, not underfunding. Less surprising is insufficient coordination of schemes to deliver legal aid with one another and the external world.

All in all, whilst Poland has recently entered the path of developing an effective aid system, there is still a long way ahead.