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Legal aid

 Poland

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European Judicial Network
(in civil and commercial
matters)

1 What costs are involved in legal proceedings and who normally has to bear them?

Costs of legal proceedings are the costs necessary for a person to assert or defend their rights before a court. They cover court costs and, where the party argues their case in person or through counsel other than an advocate (*adwokat*), attorney at law (*radca prawny*), or industrial property agent (*rzecznik patentowy*), the costs of travel to the court of the party or the party's counsel and an amount equivalent to the party's earnings lost as a result of their appearance in court, but not higher than the equivalent of the fee of one professional counsel, and where the party is assisted by counsel who is an advocate, attorney at law, or industrial property agent, the fee of that counsel.

Court costs include fees and expenses.

A fee is charged on each document lodged which is subject to the payment of a fee. Documents subject to the payment of a fee and the rates are set out in the Act of 28 July 2005 on court costs in civil matters (*Ustawa z dnia 28 lipca 2005 roku o kosztach sądowych w sprawach cywilnych*). The Act also lays down the rules for calculating the amount of expenses.

In particular, the following documents are subject to a fee:

- statement of claim/counterclaim;
- statement on the extension or modification of the claim as a result of which the value in dispute increases;
- appeals (*apelacja* and *zażalenie*);
- appeal to the highest instance (*skarga kasacyjna*) and appeal for a final judgment to be declared unlawful;
- application to set aside a judgment by default;
- complaint against a payment order;
- primary intervention (*interwencja główna*) and secondary intervention (*interwencja uboczna*);
- request to bring non-contentious proceedings;
- petition for bankruptcy;
- request for entry in/deletion from the land register,
- request for entry in the National Court Register (*Krajowy Rejestr Sądowy, KRS*) and in the register of pledges, and for an amendment to or deletion of such entries;
- application for revision of a judgment,
- action for annulment of an arbitration award;
- complaint against a decision of a judicial clerk;
- complaint against the actions of the court bailiff;
- request for the issue of the following documents on the basis of the case-file: a duplicate, extract, certificate, excerpt, other document or copy, and request for a copy of the land register (subject to a registry fee).

Expenses include inter alia:

- travel expenses of a party exempt from court costs, related to the party's appearance in court, if such appearance has been ordered by the court;
- reimbursement of travel and accommodation expenses and lost earnings or income of witnesses in connection with their appearance in court;
- fees and reimbursement of costs incurred by expert witnesses, translators and guardians appointed for the party in the case;
- flat-rate costs for collecting evidence from the opinion of a panel of court experts;
- fees payable to other persons or institutions and reimbursement of their expenses;
- costs of collecting other evidence;
- costs of transport and safekeeping of animals and objects;
- costs of placement and detention;
- lump sums payable to court-appointed guardians for completing a background survey in matters concerning annulment of a marriage, divorce and legal separation, and for supervising court-scheduled parental contacts;
- costs of a court doctor's certificate;
- costs of mediation following referral by a court;
- costs of announcements.

Unless otherwise provided by law, the party who lodges with the court a document that is subject to a fee or gives rise to expenditure is liable to pay the court costs.

Some entities are exempt from court costs by law (no request is necessary), for example:

- a party requesting that paternity or maternity be established and asserting related claims (where an action for establishment of paternity proves to be manifestly unfounded, however, in its decision closing the proceedings, the court may order the applicant to pay the unpaid court costs, having regard to all the circumstances of the case);
- a party claiming maintenance and the defendant in a case for reduction of maintenance;
- a party requesting that contractual clauses be declared unfair;
- an employee who brings an action or requests non-contentious proceedings, except where the value of the claim exceeds PLN 50 000, or a person who brings an appeal in social security cases;
- a party to a case relating to mental health;
- an incapacitated person in proceedings for the revocation or modification of their incapacity status.

Expenses are provisionally paid by the State Treasury if they relate to an action taken by the court of its own motion (e.g. when it admits evidence not sought by a party). Other expenses are provisionally covered by the party which has requested the action which gives rise to them. The court may require a party to pay an advance towards expenses, and will not take the requested action if the advance is not paid. The court rules on the reimbursement of any overpaid advance amounts and the settlement of the costs incurred in the final judgment.

At its final judgment, the court also decides who will ultimately bear the costs of the proceedings and in what proportion. In contentious proceedings, the rule is that all costs are borne by the unsuccessful party (that is to say, those paid by that party and those paid by the other party). If an action is successful in part, the court may order that the parties bear their own costs (decide that neither party is required to reimburse the other party's costs) or split them pro rata (with the less successful party ordered to reimburse the other party for a portion of the latter's costs, as set by the court). In non-contentious proceedings (conducted in many cases, for example to decide on important child matters, acquisition of inheritance, or termination of co-ownership), the rule is that the costs are mutually offset. However, depending on the situation, including the conduct of the parties during the proceedings, the court has discretion to order otherwise, for example have one of the parties pay all the costs, including those incurred by the other parties.

2 What exactly is legal aid?

Legal aid is provided to facilitate access to justice for people who are in difficult life or financial circumstances.

The following legislation governs legal aid:

- a) in domestic cases: the Code of Civil Procedure and the Act on court costs in civil matters;

b) in cross-border cases: in addition to the laws referred to in (a) above, also by the Act on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought (*Ustawa o prawie pomocy w postępowaniu w sprawach cywilnych prowadzonym w państwach członkowskich Unii Europejskiej oraz o prawie pomocy w celu ugodowego załatwienia sporu przed wszczęciem takiego postępowania*).

Cross-border cases are cases in which an applicant domiciled or habitually resident in another Member State of the European Union (with the exception of Denmark) applies for legal aid in proceedings conducted in or to be brought in the Republic of Poland or with a view to the amicable resolution of a dispute in a civil case for which the Polish courts have jurisdiction. These are also cases in which an applicant who is domiciled or habitually resident in the Republic of Poland applies for legal aid in proceedings conducted in or to be brought in another Member State of the European Union (with the exception of Denmark) or with a view to the amicable resolution of a dispute in a civil case where the courts of that State have jurisdiction.

Legal aid comprises:

- exemption from court costs, so that the party does not need to pay in advance fees and expenses upon the initiation of the proceedings and while they are ongoing, inclusive of the cost of travel to the court, if the court orders the party to appear in person;
- appointment of counsel by the court in the court proceedings, including for the preparation of the document instituting the proceedings (in cross-border cases, also for the purpose of providing legal advice and an amicable resolution to the dispute out of court), so that the party is represented by a professional lawyer at no cost;
- in addition, in cross-border cases where the applicant has submitted an application for legal aid in proceedings conducted in or to be brought in another Member State:

a) exemption from expenditure covering the costs of translating the legal aid application in another Member State and the necessary documents in support of the application;

b) the appointment of an advocate or attorney at law for the purpose of providing legal assistance to an applicant in the Republic of Poland for proceedings conducted in or to be brought in another Member State, until the date on which the application for legal aid is received by the competent authority of that Member State.

Legal aid may be full or partial. In the latter case, it may only cover the appointment by the court of counsel without exemption from court costs or the appointment by the court of counsel with partial exemption from costs (e.g. a specific portion thereof or a specific item of costs).

In Poland, ad hoc legal aid as part of what is referred to as 'free legal aid' (nieodpłatna pomoc prawna) is also available. Free legal aid is governed by the Act of 5 August 2015 on free legal aid, free civil counselling and legal education (Ustawa z 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej). Free legal aid covers:

- *free-of-charge legal advice provided by an advocate or an attorney at law, also with regard to ongoing court proceedings;*
- *free-of-charge preparation of a draft document, with the exception of procedural documents in ongoing court proceedings;*
- *free-of-charge preparation of an application for exemption from court costs and/or for the appointment by the court of counsel in ongoing court proceedings;*
- *free-of-charge mediation.*

3 What are the requirements for legal aid to be granted?

Legal aid in court proceedings is available to both natural and legal persons, as well as to organisational units entitled by law to be a party in such proceedings.

A natural person can be exempted from court costs if they are unable to bear such costs without hardship to themselves or their families or would put them at risk of such hardship.

A legal person or an organisational unit other than a legal person entitled by law to be a party to court

proceedings may be exempted if it lacks sufficient means to pay the costs. Commercial companies (except where the State Treasury is the sole partner or shareholder) should also demonstrate that their partners or shareholders do not have sufficient means to increase the company's assets or grant a loan to the company.

Social organisations not involved in business activities may also apply for an exemption from court costs in their own cases conducted in connection with social, scientific, educational, cultural, sporting, charitable or self-help activities as regards consumer protection, environmental protection and social welfare.

There are no fixed income thresholds for receiving legal aid. The court exercises its discretion in that respect, having regard to the composition of the party's revenue, assets and expenditure, including the number of dependent persons they have. The court may also conclude that the party lacks sufficient means to cover counsel's fees, but has sufficient means to cover some or even all of the court costs.

Moreover, in domestic proceedings, the court may refuse to appoint counsel, even when the party cannot afford to pay, if it considers that there is no need for the involvement of counsel. In practice, this occurs when the case is not complicated, especially if the party has shown in the proceedings so far that they are familiar with the law and procedure.

In cross-border proceedings, the court may refuse legal aid to persons resident or staying in another EU Member State, with the exception of Denmark, if the relief sought or the defence of rights is manifestly unfounded. Legal aid may also be refused on grounds relating to the substance of the case, if the applicant has been granted legal aid previously in that case for the amicable resolution of the dispute before the initiation of civil court proceedings, but no settlement was reached.

A formal condition for obtaining legal aid is that the application must be submitted to the court in the manner set out in points 6 to 8 below.

Notwithstanding the above, a person with no command of the Polish language may, upon request submitted to the court hearing the case (or which should hear the case, if the request is lodged before the initiation of proceedings), be granted the assistance of an interpreter free of charge during the hearing. The request does not need to meet formal requirements like those for legal aid applications. This is laid down in Article 5 of Act of 27 July 2001 on the organisation of ordinary courts (Ustawa z dnia 27 lipca 2001 roku prawo o ustroju sądów powszechnych). By contrast, a party seeking free assistance with the translation of pleadings and documents required to be submitted to the court must have made a simple request for legal aid.

Only natural persons, including sole traders who do not employ other persons (self-employed persons), are eligible for free legal aid if they are unable to bear the costs of paid legal assistance.

An advocate or attorney at law may refuse to provide free legal aid for imperative reasons, informing the eligible person of other centres which provide free legal aid within the district (powiat).

If it is found that the problem communicated by the eligible person cannot be resolved entirely or in part through the provision of free legal aid, in particular that the problem is not only legal in nature, the advocate or attorney at law is to inform the person of other possibilities for obtaining appropriate assistance from providers of free advisory services. For instance, they may provide information on the services of an entity giving free advice, in the form of an advice information sheet (karta informacyjna poradnictwa).

Additionally, where free legal aid is to cover free mediation, it will not be granted if the case has been referred for mediation by a court or other authority and where there is a reasonable suspicion of violence in the parties' relationship.

4 Is legal aid granted for all types of proceedings?

Yes. Legal aid is available in all civil cases, including family, commercial, employment and social security matters (e.g. retirement pensions and annuities).

5 Are there special procedures in cases of need?

There is no specific procedure for emergencies.

6 Where can I obtain a legal aid application form?

There is no official application form for legal aid in national proceedings. A request is simply made in writing or orally for the record.

In cross-border cases, use can be made of the official form set out in the Annex to Commission Decision No 2004/844/EC of 9 November 2004 establishing a form for legal aid applications pursuant to Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. The forms are available at the registries of the courts where the proceedings are pending or are to be brought. They can also be downloaded from the website of the Ministry of Justice. However, use of the form is not mandatory. An application should include a statement giving details of the applicant's family status, assets, income and sources of livelihood. An application for legal aid for the amicable resolution of the dispute before the initiation of civil court proceedings must also contain a detailed account of the facts of the case.

Using a form is mandatory only for cross-border cases in which proceedings are being conducted in another Member State and involve a person who is a Polish national or has the right of permanent residence in Poland.

In cross-border cases, the application may be submitted not only in Polish but also in English.

7 Which documents need to be submitted with the legal aid application form?

An application for exemption from court costs or for the appointment by the court of counsel in national proceedings must include a declaration on family status, assets, income and sources of livelihood in accordance with the template specified in the Regulation of the Minister of Justice of 3 October 2016 on the payment by the State Treasury of free legal aid provided by a court-appointed advocate (*Rozporządzenie Ministra Sprawiedliwości z dnia 3 października 2016 r. w sprawie ponoszenia przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej przez adwokata z urzędu*). The templates are available in electronic format in Polish on the courts' websites, on the website of the Ministry of Justice and in paper form at court registries. This is a formal requirement, and failure to rectify any shortcoming in this respect within one week of the court's request gives rise to dismissal of the application. If the circumstances given in the application raise concerns, the court may order an enquiry into the actual circumstances of the applicant, in particular by requesting the latter to provide additional clarification or documents.

In cross-border proceedings, a person who is resident or permanently resident in another EU Member State, with the exception of Denmark, is required to attach the following to the application:

- documents confirming the details in the application;
- supporting documents in respect of the applicant's nationality, place of residence or habitual residence and, if the applicant is not a national of a Member State, a supporting document confirming that the applicant is residing in the territory of the Member State in compliance with the law of that State;
- a statement by the applicant on whether the applicant has already been granted legal aid for the amicable resolution of the dispute concerned and, if such aid has been granted, but no settlement has been reached, clarification of the reasons for this.

The above documents should be translated into Polish or into English by a person qualified to translate official documents in the Member State from which the request originates.

If an application in cross-border proceedings does not contain any of the information required or raises concerns as to its accuracy, the court will request the applicant to provide additional clarification or documents within a prescribed time limit of no more than one month. In particular, the applicant may provide copies of tax returns, statements and extracts of bank accounts, bank deposits or securities deposits, or certificates indicating the amount of salary, fees and other remuneration or benefits earned, pensions, annuities and alimonies. In the

event of failure to comply with the time limit, the court will examine the application on the basis of the information provided.

In practice, for an application in national or cross-border proceedings to be expedited, it should be accompanied from the outset by all documents the applicant considers necessary to prove their financial situation, in particular those referred to above.

If free legal aid is sought, the application must include the applicant's declaration concerning lack of sufficient means to bear the costs of paid legal assistance. A person seeking free legal aid with regard to their business activity must submit in addition a declaration that they have not employed any other persons in the last year. The above declarations must be drafted in accordance with the pre-defined templates available at free legal aid centres. The declarations are to be submitted to the person providing the free legal aid.

Since free legal aid is typically provided directly at the centre after the application is made, the applicant should also carry an identity document and all documents necessary to present the legal issue, so that the aid provided is effective.

8 Where do I submit my application for legal aid?

An application for exemption from court costs or for the appointment by the court of counsel must be submitted to the court before which the proceedings in a national dispute are to be brought or are already ongoing.

A natural person resident or habitually resident in an EU Member State (with the exception of Denmark) who applies for legal aid in cross-border proceedings which are ongoing or to be brought before a Polish court may apply for legal aid to the court where the declaratory proceedings are ongoing or to be brought. If the application concerns legal aid in execution or enforcement proceedings, it must be lodged before the district court competent for the area where the decision is to be executed or where the enforcement will take place. Applications for legal aid may also be submitted through the Polish Ministry of Justice or a designated competent authority of the Member State where the applicant is resident or habitually resident. The Ministry of Justice will promptly forward such applications to the competent court.

A natural person resident or habitually resident in Poland who is seeking legal aid in proceedings which are ongoing or to be brought in another Member State (with the exception of Denmark) may lodge the application before the competent court of the other Member State. The application may also be submitted through the regional court competent for the place of residence or habitual residence in Poland.

An application for legal aid under the free legal aid scheme can be submitted to one of the free legal aid centres in Poland, which are established in districts and cities with district status. For a map of the centres and contact details see: <https://darmowapomocprawna.ms.gov.pl/pl/mapa-punktow/>

9 How do I find out whether I am entitled to legal aid?

The Polish court will serve on the applicant its decision about the application for exemption from court costs or the appointment of counsel by the court. Information about the status of the application and whether or not it has been granted may also be obtained by telephone or email from the court registry.

Applicants for free legal aid will be informed directly whether they are eligible at the centre where the free legal assistance is provided.

10 What should I do, if I am entitled to legal aid?

No further action is required if an exemption from court costs is granted. However, if there are costs the exempted party must incur to have their rights protected (e.g. translation costs or costs of travel to the court, if the party has been summoned to appear in person), the party will need to apply to the court for an advance towards such costs. Otherwise, it may be that the court will expect the party exempted from court costs to cover the costs temporarily, which will then be reimbursed to them. If an advance is granted, it must be settled on the basis of invoices within one month of receipt of the advance, and in any event before a decision is issued on the final settlement of the costs of the proceedings.

If an advocate or an attorney at law is appointed, they should be contacted. The court may serve on the applicant a copy of the decision appointing an advocate or attorney at law but without details of the full name and address for service of the advocate or attorney at law appointed. The court will communicate those details in a subsequent letter, after it has been informed thereof by the competent regional bar council or the regional chamber of attorneys at law.

A person exempted by the court from all or some court costs prior to the initiation of court proceedings is required to attach a copy of the exemption decision to the application or other document initiating the proceedings.

In the framework of the free legal aid scheme, a person found to be eligible for legal aid will receive it directly in the expected form at the free legal aid centre.

11 Who chooses my lawyer, if I am entitled to legal aid?

An advocate or attorney at law, as applicable, is appointed by the competent regional bar council or regional chamber of attorneys at law, but if specific counsel is named in the application, they will be appointed as the applicant's counsel to the extent possible and with their agreement. The advocate or attorney at law may refuse to deal with the case on imperative grounds, in which case the self-regulatory body will appoint other counsel. A change to an already appointed counsel may be requested in the course of the proceedings, also on imperative grounds.

It is possible to state a preference in the request to the effect that counsel should have good command of a certain foreign language and come from a specific branch of the legal profession, in particular that they should be an advocate or an attorney at law. In practice, the court will grant such a request.

In the free legal aid scheme, it is not possible to choose an advocate or an attorney at law. Such legal aid will be provided by the advocate or attorney at law on duty at the legal aid centre of the applicant's choice or by a legal trainee authorised by that advocate or attorney at law.

12 Does legal aid cover all the costs of the proceedings?

A party granted a complete exemption from court costs will not pay any court fees and will not incur any expenses. If exempted from court costs in part, the party must cover the court fees and expenses insofar as they are not covered by the exemption. If that party wins the case, the court will order the unsuccessful party to reimburse those costs to the successful party in the decision closing the proceedings.

If a party exempted from court costs is wholly or partly unsuccessful, in its closing decision the court will order that party to reimburse the costs of court proceedings incurred by the opposing party (but not those incurred by the State Treasury).

13 Who bears the other costs, if I am entitled only to limited legal aid?

A person exempted from court costs in part is required to pay the remaining court costs.

14 Does legal aid also cover appeals?

Legal aid granted by the court of first instance also includes appeal and enforcement proceedings. A party not represented by counsel (e.g. an advocate) at first instance may apply for that form of assistance at second instance. Where it is necessary to bring an extraordinary appeal, the party must submit a special request, which will lead to a specific decision on that legal step only.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)?

The court may withdraw legal aid, both in the form of an exemption from court costs and the appointment by the court of counsel, if it is found that the reasons on the basis of which it was granted did not exist or have ceased

to exist. In either case, the party will be required to pay all the applicable fees and to reimburse the expenses, except that in the latter case, the court may also order the party to do so only in part, in accordance with the change in the party's situation.

When withdrawing an exemption, the court may penalise a party exempted from court costs on the basis of circumstances misrepresented knowingly, with a fine of up to PLN 1 000, and a party granted the assistance of court-appointed counsel on the basis of such circumstances with a fine of up to PLN 3 000. Independently of the obligation pay the fine, the party must pay all the applicable fees and cover the expenses for which the party is liable, or pay the fees of the court-appointed counsel.

A person re-applying for exemption from court costs who has knowingly misrepresented their circumstances as regards family status, assets, income and sources of livelihood, will have the application rejected by the court and will be required to pay a fine of up to PLN 2 000.

An appeal may be brought against a decision to fine a party, as set out in point 16 below.

16 Can I contest a refusal to give legal aid?

Yes. An appeal may be brought against a decision refusing an exemption or the appointment by the court of counsel or, if it was issued by a judicial clerk, a complaint may be lodged against the decision of the latter. Before a decision is challenged, a request for a written statement of reasons must be submitted within one week of service of the decision. After receiving the decision with written statement of reasons, the appeal must be brought within one week, addressed to the court which issued the decision. No fees are charged on a request for a written statement of reasons or an appeal or complaint against a judicial clerk's decision. A similar procedure applies in the event of withdrawal of a previously granted exemption from court costs or of the appointment by the court of counsel.

By contrast, a person refused free legal aid cannot challenge such refusal.

Further information

- Act of 28 July 2005 on court costs in civil matters;
- Code of Civil Procedure of 17 November 1964;
- Act of 17 December 2004 on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought;
- 2004/844/EC: Commission Decision of 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;
- Act of 5 August 2015 on free legal aid, free civil counselling and legal education;
- <https://www.gov.pl/web/nieodplatna-pomoc/npp>;
- <https://www.gov.pl/web/sprawiedliwosc/formularze-dotyczace-przyznania-prawa-pomocy-w-postepowaniu-w-sprawach-cywilnych-prowadzonym-w-panstwach-czlonkowskich-unii-europejskiej>
- websites of individual district and regional courts.

17 Does the request for legal aid have the effect to suspend the limitation period?

In cases of applications for exemption from court costs, the lodging of the relevant application or an appeal against a decision refusing exemption will not, in principle, suspend the ongoing proceedings, unless the applicant has obtained an exemption from court costs as a result of an application made in the statement of claim or before the action was brought. In the event of the definitive dismissal of an application submitted before the expiry of the time limit for payment of the fee for the pleading, the time-limit for payment will start to run again from the date of service of the request for payment or, in certain cases where the party is represented by an advocate or attorney at law, from the date of service of the decision dismissing the application for exemption from costs. However, any new application for exemption from legal costs based on the same circumstances no longer affects the time limit for payment of the fee.

Also in cases of applications for the appointment of counsel by the court, the lodging of the relevant application or an appeal against a decision refusing such appointment will not, in principle, suspend the ongoing proceedings, unless the application was made in the statement of claim or before the action was brought. However, the court may suspend hearing the case until a final decision has been taken on the application. Accordingly, it may not fix a hearing but may cancel or postpone a hearing scheduled.

Where legal representation by an advocate or attorney at law is mandatory for a particular procedural act (lodging of an appeal to the highest instance (*skarga kasacyjna*), application for revision of a judgment, certain appeals against court decisions), the submission of an application for the appointment of counsel by the court before the expiry of the time limit for carrying out such action will stop the time limit. Whether the application is granted or rejected, the time limit will start to run again. However, any new application based on the same circumstances no longer affects the running of the time limit.

Further information

- Act of 28 July 2005 on court costs in civil matters;
- Code of Civil Procedure of 17 November 1964;
- Act of 17 December 2004 on the right to legal aid in civil court proceedings conducted in the Member States of the European Union and on the right to legal aid with a view to the amicable resolution of a dispute before proceedings are brought;
- 2004/844/EC: Commission Decision of 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;
- Act of 5 August 2015 on free legal aid, free civil counselling and legal education;
- <https://www.gov.pl/web/nieodplatna-pomoc/npp>;
- <https://www.gov.pl/web/sprawiedliwosc/formularze-dotyczace-przyznania-prawa-pomocy-w-postepowaniu-w-sprawach-cywilnych-prowadzonym-w-panstwach-czlonkowskich-unii-europejskiej>
- websites of individual district and regional courts.

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