



**RADA FUNDACJI**

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Warsaw, on the 5<sup>th</sup> of July 2016

***LESZEK ORŁOWSKI v. POLAND***

**(Application No. 5547/15)**

**WRITTEN COMMENTS**

**BY**

**THE HELSINKI FOUNDATION FOR HUMAN RIGHTS**

**1. Introduction**

Pursuant to the letter of Ms Marialena Tsirli, the Section Registrar of the Fourth Section of the European Court of Human Rights (hereinafter also referred to as “ECtHR”), dated 7<sup>th</sup> June 2016, granting leave to make written submissions to the High Court by the 5<sup>th</sup> of July 2016, and our letter of 27<sup>th</sup> February 2016, the Helsinki Foundation for Human Rights (hereinafter also referred to as “HFHR”) with its seat in Warsaw, Poland, would like to respectfully present its written comments on the case of *Lukasz Orłowski against Poland* (application no. 5547/15).

The HFHR would also like to underline that although these written comments are presented for the purpose of the case *Lukasz Orłowski against Poland*, the deliberations presented herein can also be applied to another case communicated by the High Court – the case *Patrycjusz Gerter against Poland* (application no. 69912/14).

Due to the nature of third-party intervention in the form of written comments, we do not include any comments on the facts or merits of the analysed case of *Lukasz Orłowski against Poland*. These comments are limited to general principles involved in the solution of the case. We present the national case-law and administrative practice in relation to the requirement to provide the residential address of the opposing party and practical problems which may arise in obtaining the said residential address. In addition, we present selected statistical data provided by Polish Regional Courts. In the last part of these written comments we present a comparative analysis of legislative and practical solutions in various States in relation to the obligation to provide the address of the defendant.

## 2. Requirement to present the residential address of the opposing party

The Polish Civil Procedure Code (hereinafter referred to as “CPC”) in its article 126 §2 (1) imposes on the plaintiff an obligation to indicate in its statement of claim the defendant’s “place of residence” and its “address” (Polish: *adres*). The courts interpret Article 126 § 2 (1) CPC strictly and are of the opinion that the term “address” should be understood as the defendant’s actual residential address<sup>1</sup>. This is in spite of the fact that the CPC does not expressly contain such a requirement and in other statutes a more precise wording is adopted. For example, the Police Act refers not to the “address”, but to the “residential address” (Polish: *adres zamieszkania*).

Due to this restrictive approach, a statement of claim which lacks a defendant’s actual residential address (or a company’s/partnership’s registered address) is deemed to be defective. As such, before it takes any effect, the court acting under article 130 CPC summons the plaintiff to supply the missing information within 7 days. The plaintiff’s failure to do so within the prescribed timeframe results in the statement of claim being rejected and returned. A returned statement of claim has no legal effect. In particular, it does not interrupt a claim’s limitation period.

The courts rigorously enforce the requirement that the actual residential address be indicated. They have reiterated a general rule that no other address can be provided in its place – even in cases where the defendant may be easily reachable under the other address (e.g. at his or her place of employment)<sup>2</sup>. This is because the courts consider the defendant’s residential address not only relevant for communication, but also subsidiary for sufficient identification of a defendant and determination of international and local jurisdiction over the case. Indeed, the defendant’s place of domicile is generally the relevant factor in establishing international and local jurisdiction.

This strict approach of the courts turns out to be very troublesome to some plaintiffs and may unjustly hinder access to justice.

Whereas addresses of sole traders, partnerships and companies can be found in publicly available registers<sup>3</sup>, now also online, addresses of individuals who do not run a business are not so easily obtained. They cannot be found in any register and potential defendants may change their residential addresses without giving notice to anyone. As a result, the courts decided to slightly relax the requirement to provide an actual residential address of the defendant. As a single exception, the courts accept to proceed upon the defendant’s registered residential address (Polish: *adres zameldowania*), but only if it is reasonable to assume that the defendant actually lives at that address<sup>4</sup>.

This improves the plaintiff’s position as the defendant’s registered address may be more easily established. Although there is no unrestrictedly accessible database of registered addresses, upon satisfying certain statutory requirements anyone can obtain a registered address of a given person from a database held by the Centre for Personalization of Documents, a part of the Ministry of the Interior and Administration (hereinafter referred to as “Centre”).

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<sup>1</sup> See the Supreme Court’s resolution of 17 July 2014, case no. III CZP 43/13

<sup>2</sup> *Ibidem*

<sup>3</sup> For companies and partnerships see <https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu> and for sole traders see <https://prod.ceidg.gov.pl/ceidg/ceidg.public.ui/Search.aspx>

<sup>4</sup> A. Torbus, Commentary to Article 126 of the CPC [in:] K. Piasecki (ed.), *The Commentary to the CPC*. Vol I, CH Beck 2016.

When the registered address cannot be obtained from the Centre or proves to be outdated, the plaintiff can petition the court to appoint a guardian for the absent defendant on whom the pleadings would be served (article 144 of the CPC). The courts require, however, that the plaintiff *prima facie* demonstrates that he has taken all available and reasonable steps to establish the actual whereabouts of the defendant<sup>5</sup>.

#### **(a) The procedure to obtain the defendant's registered address**

Under article 46 § 1(1) of the Registration of Population Act, the Centre grants information on registered addresses of third parties upon a payment of a fee of PLN 31 (approx. EUR 7).

An applicant is obliged to provide sufficient information to ascertain the correct person in the database. This requirement may be particularly onerous when the Centre's database contains records of two or more persons with identical first names and surnames<sup>6</sup>. In such circumstances, the plaintiff should provide additional information to identify the correct person (e.g. parents' names; place and/or date of birth, etc.)<sup>7</sup>. If no such information is provided, the Centre will refuse to produce any search results.

Furthermore, when applying to the Centre, the applicant must prove that he has a so-called "legal interest" in obtaining such information. This means that an applicant must prove that the information he is requesting is indispensable for him in proceedings before a public body. In theory this should not be a problem for a potential plaintiff, as the requirement that the statement of claim contains the defendant's address stems directly from the Civil Procedure Code. Yet, in practice, plaintiffs face multiple difficulties.

In deciding whether an applicant indeed has a legal interest, the Centre is supposed to review applications on a case-by-case basis. In this process, the Centre applies internal guidelines which are not available to the public. The guidelines indicate what kind of information must be provided before an application is granted. In a telephone conversation<sup>8</sup> with the Centre we were informed that the Centre also applies some additional criteria, which are not contained in the guidelines but follow from practice.

We were told that if an applicant wishes to initiate civil proceedings and needs a registered address for the defendant, the Centre will generally not grant him the defendant's data unless it receives proof that a statement of claim has been filed<sup>9</sup>. We were also told that due to the large number of applications (exceeding one million applications annually) and the understaffing of the office, the waiting period is usually between 2 and 3 months.

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<sup>5</sup> See for example the Supreme Court judgment of 30 April 1997, case no. WW CKU 71/97; the Supreme Court decision of 15 December 2010, case no. II CZ 150/10; Court of Appeals in Szczecin, decision of 6 February 2014, case no. I ACz 1598/13; Court of Appeals in Poznan, decision of 23 August 2013, case no. I ACz 1435/13. See also K. Weitz, Commentary to Article 144 of the CPC [in:] T.Erecinski (ed.), Commentary to the CPC, Vol I, LexisNexis 2012.

<sup>6</sup> For example, in 2014 in Poland, there were 277 191 people with the surname "Nowak" and 178 103 people with the surname "Kowalski/Kowalska". Information available at the Ministry of Interior and Administration website: <https://mswia.gov.pl/pl/aktualnosci/12891,100-najpopularniejszych-polskich-nazwisk.html> (date of access: 4<sup>th</sup> July 2014).

<sup>7</sup> See the Supreme Administrative Court in Warsaw judgment of 14 October 2014, case no. II OSK 824/13.

<sup>8</sup> Telephone conversation on 28 June 2016 with an employee of the Centre for Personalization of Documents at the Ministry of the Interior and Administration (Centrum Personalizacji Dokumentów Ministerstwa Spraw Wewnętrznych i Administracji; phone no. + 48 22 601 79 06); telephone conversation on 30 June 2016 with Mr Jakub Makowski, the Head of the Disclosure of Information Unit, Department of the Civil Affairs at the Ministry of the Interior and Administration (Wydział Udostępniania Informacji, Departament Spraw Obywatelskich Ministerstwa Spraw Wewnętrznych i Administracji; phone no. +48 22 602 83 37)

<sup>9</sup> *Ibidem*

In these circumstances, a plaintiff who knows neither the actual nor the registered address of the defendant must file a statement of claim which does not contain the required information. Only then may the plaintiff apply to the Centre for information on the defendant's registered address. If the plaintiff applies at an earlier stage, its application is likely to be dismissed.

As mentioned earlier, if a statement of claim does not indicate the defendant's address, the plaintiff is summoned by the court to provide the relevant information within 7 days from receipt of the summons. According to an established view, this deadline is a firm one and cannot be prolonged by a judge even under exceptional circumstances. The court also does not have the power to stay the proceedings for the time necessary for the plaintiff's application to be processed by the Centre. If the 7-day deadline lapses without the plaintiff providing the defendant's address, the statement of claim is rejected and returned to the plaintiff.

Taking the above into consideration, even if a plaintiff applies to the Centre immediately upon initiating the court proceedings, it will often not receive a reply until its statement of claim has been rejected. In such a situation, the plaintiff has two options. If the limitation period has not lapsed, he may file a fresh statement of claim which will now contain all the required information. If the limitation period has lapsed, he may submit the information which was required under the court summons and apply under article 168 CPC that this be considered as submitted within the original 7-day deadline. Such an application will be granted if the 7-day deadline was exceeded without plaintiff's fault. If the court finds this to be the case, it will accept that the statement of claim was completed within the prescribed time limit.

Both of these scenarios are, however, available only to plaintiffs who have obtained the relevant information from the Centre. This will not always be the case, as in practice the Centre also takes into consideration some additional factors which seem to be irrelevant from the perspective of establishing the applicant's legal interest. For example, on its website the Centre admits to dismissing requests from plaintiffs whose claims are potentially time-barred. In doing so, it does not take into consideration that in Poland limitation of claims is a defence which may, but need not be submitted by the defendant and that submitting such a defence may in certain situations be considered as an abuse of law, and thus ineffective.

Further, we were told in a conversation with the Centre<sup>10</sup> that in the event of the applicant seeking to prove his legal interest by producing the court summons to supplement information contained in the statement of claim, the applications are granted only if the summons is less than two months old. It seems that the Centre dismisses those applications which were submitted with a delay, even though such a delay has no connection to the existence of the applicant's legal interest in obtaining the relevant information. Such a criterion does not have any statutory grounds. Thus, in these cases the Centre clearly exceeds its competencies and restricts access to requested information in an unjustified manner. It should also be taken into consideration that a delay in making the application may be caused by compelling reasons, such as a wish to pursue settlement negotiations with the defendant prior to issuing the claim or an illness. It is uncertain whether the Centre would consider that applications delayed by such compelling reasons were still appropriate for processing.

The Centre's decisions are subject to review by the Minister of the Interior and Administration and two tiers of administrative courts (the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court). However, the appeal proceedings may take more than 3 years. Even if the Centre's decision is eventually overturned, a 3-year delay in obtaining the defendant's address and initiating the court proceedings may mean that the applicant's claims become time-barred.

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<sup>10</sup> *Ibidem*

### **(b) The procedure and requirement to appoint a guardian for the absent defendant**

If the application is denied, the plaintiff is not able to obtain the defendant's registered address. In such situation, if the claim is not prescribed, the plaintiff may once again file the statement of claim, applying therein for appointment of a guardian for the absent defendant on whom the pleadings will be served (art. 144 of the CPC).

The courts are, however, very reluctant to appoint such guardians. The requirements which must be satisfied are very demanding. The courts require plaintiffs to demonstrate that they have taken all reasonably available measures to locate the defendant, including but not limited to the procedure before the Centre. The courts require plaintiffs to show that they have attempted to establish the whereabouts of the defendant by contacting his or her relatives, friends, employer, landlord, etc.<sup>11</sup> In case of defendants domiciled abroad or foreign defendants, the courts require reasonable steps to be taken as available in the relevant foreign jurisdiction (e.g. by contacting the relevant embassy to learn about the available measures and possibly by hiring a lawyer in the other jurisdiction to conduct the necessary searches/applications, etc.)<sup>12</sup>

As yet it is uncertain (we found no reported cases) whether the courts would be willing to establish a guardian when the plaintiff did not obtain the defendant's registered address because it was unable to provide the Centre with sufficient information to identify the relevant record from multiple records of persons with identical first names and surnames.

### **(c) Identified issues**

Based on the above description of the present system, we have identified five main issues which might constitute a hindrance to access to justice:

- A. Strict judicial interpretation of the term "address" under the CPC. A more relaxed approach, enabling plaintiffs to provide alternatives to the defendants' residential addresses (such as addresses at their place of employment), would in many cases facilitate access to justice without requiring plaintiffs to undergo troublesome and long administrative procedures and/or use of private investigators. Many defendants are known to plaintiffs by their place of employment (journalists, police or prison officers, etc.) and hence their name and place of employment should be sufficient to identify the correct person. Further information about defendants may be obtained from them directly in the course of the proceedings;
- B. Non-transparency of criteria which the Centre applies when investigating whether an applicant has a legal interest in obtaining the requested information. At present it is uncertain what kind of requirements these guidelines contain and whether the Centre follows these requirements in a consistent manner. The guidelines should be made public;
- C. Although refusals to provide information from the Centre are subject to scrutiny by the administrative courts, such scrutiny may take up to several years and thus ultimately the applicant may be granted relevant information when his claim has already been prescribed;
- D. The courts are obliged to provide plaintiffs with 7 days to supplement the necessary information and, according to the established view, are not entitled to stay the proceedings for the time necessary to obtain information from the Centre. The courts should either be able to give plaintiffs more time to supplement the statement of claim

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<sup>11</sup> See: Court of Appeals in Szczecin, decision of 6 February 2014, case no. I ACz 1598/13.

<sup>12</sup> See: Court of Appeals in Krakow, decision of 30 March 2016, case no. I Acz 464/16

or to stay the proceedings for the time necessary for the plaintiff to obtain the registered residential address of the defendant from the Centre;

- E. In case of the defendant having the same name and surname as at least one other person, the plaintiff is not able to obtain information about the defendant's registered address without providing the Centre with some additional information. In such cases, the courts should be willing and able to appoint a guardian for the defendant or to review the list of the search results and possibly select the records which will most likely match the defendant's description, subject to confirmation during the proceedings. This is already possible from a technical point of view, as courts have access to a copy of the Centre's database.

### 3. Statistical data provided by Polish Regional Courts

There is no generally publicly accessible information in Poland pertaining to the number of first pleadings in civil claims returned to the plaintiffs based on the fact that the plaintiff could not indicate the opposing parties' personal address, as required by the Article 126 § 2 of the CPC. The HFHR has thus directed on 21<sup>st</sup> June 2016 motions for access to public information to the Regional Courts in Warsaw, Cracow, Szczecin, Płock, Zamość, Olsztyn, Poznań, Wrocław, Gdańsk and Zielona Góra. In these motions the HFHR has requested access to information on how many court orders have been issued to plaintiffs to provide the private addresses of the opposing parties in the years 2010-2015, and how many initial pleadings have been returned based on the fact that such addresses have not been provided in the years 2010-2015. As of the 5<sup>th</sup> of July 2016, the HFHR has received responses from the Regional Court in Cracow, Płock, Wrocław and Zamość.

The Regional Court in Cracow informed us<sup>13</sup> that it does not keep separate records and statistics on how many occasions the Court asked the parties to amend their initial pleadings by providing information required by Article 126 § 2(1) of the CPC. Nor does the Regional Court keep separate records on how many orders to return the initial pleading (Polish: *zarządzenie o zwrocie pozwu*) are issued solely on the basis of lack of specification of the opposing party's address by the plaintiff. The Court was nevertheless capable of providing the HFHR with electronically generated statistics<sup>14</sup> on how many occasions the parties have been summoned to amend (Polish: *wezwanie do usunięcia braków formalnych*) the pleadings initiating the civil proceedings and how many orders to return such pleadings have been issued. In the First Department for Civil Matters of the Regional Court in Cracow, the information on summons to amend the pleadings has been gathered since 2012. There were 702 such summons in 2012, 1171 in 2013, 1144 in 2014 and 826 in 2015. When it comes to orders to return the initiating pleadings, there were 567 such orders in 2012, 511 in 2013, 631 in 2014 and 551 in 2015. The percentage ratio of orders to return the initial pleadings (which resulted from non-fulfilment of the summons to amend the pleadings) to the number of summons to amend them therefore varies in the First Department for Civil Matters from 44% in 2013 to 81% in 2012. In the Eleventh Department for Civil and Family Matters the statistics show that there were 1305 summons by the court to amend the pleadings in 2013, 3906 in 2014 and 433 in 2015, while the rate of orders to return the initial pleadings is relatively steady – 424 orders in 2013, 459 in 2014 and 433 in 2015. The respective percentage of orders to return the initial pleadings to summons to amend the pleadings in Eleventh Department amounted thus to 32% in 2013, 12% in 2014 and 11% in 2015.

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<sup>13</sup> Information provided by the Regional Court in Cracow on 27<sup>th</sup> June 2016 in response to HFHR motion for access to public information (Adm.SO.-0144-1-131/16).

<sup>14</sup> Statistical information generated by SAWA programme (produced by *Currenda* company).

The President of the Regional Court in Zamość informed us<sup>15</sup> that the Court in Zamość did not possess statistical data which could answer our motion for access to public information. The President has nevertheless pointed out that the initial pleadings have been returned to the plaintiffs cumulatively in 829 cases in the time-period 2010-2015. When it comes to the Regional Court in Płock, the President of the Court has stated that the information requested by the HFHR constitutes a so-called “processed information” and its creation would consume a tremendous amount of time and labour<sup>16</sup>. Also the President of the Regional Court in Wrocław argued that the requested information constituted a so-called “processed information”<sup>17</sup>.

The aforementioned information proves that in certain circumstances a significant majority of cases cannot be meritoriously assessed by an independent court due to formal deficiencies in the initial pleading. Although the information from Regional Court in Cracow and Zamość presented above does not refer specifically to the legal consequences of not stating the address of the opposing party by the plaintiff in the initial pleading, in the HFHR’s opinion it is reasonable to assume that a significant amount of orders to return the pleadings to the plaintiff may derive specifically from the fact that they are unable to specify the said address. This assumption is based *inter alia* on the fact that other formal requirements listed in Article 126 of the CPC are relatively easily amendable.

#### 4. Comparative analysis

In this part of our written comments we would like to present selected national legislative and practical solutions in relation to the requirements to submit certain information on the opposing party in order to initiate civil proceedings.

##### Spain

The plaintiff in Spanish legal system does not need to know the defendant’s address for the initial complaint. However, he is required to give the court as much contact information as he knows for the defendant, such as phone and fax numbers or e-mail, so that the court may locate the defendant (Art. 155 [2])<sup>18</sup>. If the defendant’s residence is available in public registries, he cannot be considered impossible to find according to Article 156 (2). The court secretary will then use all means possible to locate the defendant’s residence through registries (Article 156 [1]). If this search is unsuccessful, communication with the defendant will proceed by edict (Article 156 [4])<sup>19</sup>.

##### Switzerland

The Swiss Civil Procedure Code<sup>20</sup>, for the purpose of ordinary proceedings, provides in Article 221 that the statement of claim must include, *inter alia*, the designation of the parties and their representatives. This regulation is less stringent in comparison to the proceedings

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<sup>15</sup> Information provided by the Regional Court in Zamość on 1<sup>st</sup> July 2016 in response to HFHR motion for access to public information (Adm.061-35/16).

<sup>16</sup> Answer provided by the President of the Regional Court in Płock on 23<sup>rd</sup> June 2016 in response to HFHR motion for access to public information (OA-055-56/16).

<sup>17</sup> Answer provided by the President of the Regional Court in Wrocław on 4<sup>th</sup> July 2016 in response to HFHR motion for access to public information (A 46/117/16).

<sup>18</sup> Law 1/2000 of 7 January on Civil Procedure; Spanish language version available at: [http://noticias.juridicas.com/base\\_datos/Privado/11-2000.html](http://noticias.juridicas.com/base_datos/Privado/11-2000.html) (date of access: 30<sup>th</sup> June 2016).

<sup>19</sup> Spanish Civil Procedure Act, Art. 156(4).

<sup>20</sup> English translation of the Swiss Civil Procedure Code of 19th December 2008 (status as of 1st May 2013) available at: <https://www.admin.ch/opc/en/classified-compilation/20061121/index.html> (date of access: 28<sup>th</sup> June 2016).

initiated by the action for divorce. In this regard the Swiss legislature expressly states in Article 290 that an action for divorce may be filed without a written statement of the grounds, but it should contain among others the names and addresses of the spouses and the designation of their representatives.

### Germany

The German Code of Civil Procedure (*Zivilprozessordnung*; “ZPO”)<sup>21</sup> provides in Section 253 that the statement of claim must include the designation of the parties and of the court and the exact information on the subject matter and the grounds for filing the claim, as well as a precisely specified petition. In addition to that, the general regulations as to preparatory written pleadings are also to be applied to the statement of claim. Section 130 (1) of the ZPO provides that the written pleadings should contain the designation of the parties and their legal representatives by name, status or business, place of residence and position as a party as well as the designation of the court and of the subject matter of the litigation, among other elements. Should the statement of claim fail to meet these requirements, the presiding judge or a member of the court hearing the case delegated by the presiding judge may direct the parties to amend their preparatory written pleadings or to provide further information, and may in particular set a deadline for explanations to be submitted regarding certain items in need of clarification (Section 273 [2] 1 ZPO). In this regard under Section 296 ZPO there is a rule of refusal to accept late submissions. They are to be admitted at the court’s discretion only if admitting them would not delay the process, or if the party provides a sufficient excuse.

That being said, the rule that a statement of claim must conform with the regulations for preparatory briefs is apparently not a strict requirement in Germany. The Federal Court of Justice stated that an appellate action could go forward even though the defendant’s address was unknown<sup>22</sup> (in that particular case the lack of knowledge of the defendant’s address was attributable to the law-abusing [German: *rechtsmissbräuchlich*] behaviour of the defendant).

### Scotland, England and Wales

According to Scotland’s Sheriff Court Ordinary Cause Rules, if the defendant’s residence or place of business is unknown and cannot be reasonably ascertained by the plaintiff, the plaintiff should state this in her complaint and list the steps taken to ascertain the defendant’s whereabouts<sup>23</sup>. The initial writ to start an “ordinary cause” proceeding, Form G1, includes a space for the defendant’s name but does not specify that an address must be given<sup>24</sup>.

For small claims (certain types of financial claims under GBP 5,000) the plaintiff may use the simplified “Small Claims Summons” proceeding. The initial summons, Form 1, does require the name and address of the defendant<sup>25</sup>. However, there are arrangements made for cases in which the plaintiff does not know the defendant’s address. In that case, the sheriff may allow

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<sup>21</sup> The English version of the German Code of Civil Procedure (including amendments of 10<sup>th</sup> October 2013) is available at: [https://www.gesetze-im-internet.de/englisch\\_zpo/englisch\\_zpo.html](https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html) (date of access: 28<sup>th</sup> June 2016).

<sup>22</sup> A decision of the German Federal Court of 1<sup>st</sup> April 2009 (*Bundesgerichtshofs Beschluss vom 1. April 2009*) Az. XII ZB 46/08; para. 14; available at: <https://openjur.de/u/71815.html> (date of access: 28<sup>th</sup> June 2016).

<sup>23</sup> Act of Sederunt (Sheriff Court Ordinary Cause Rules); § 3.1(6).

<sup>24</sup> See Form G1, *Initial writ*, available at <https://www.scotcourts.gov.uk/rules-and-practice/forms/sheriff-court-forms/ordinary-cause-forms> (date of access: 28<sup>th</sup> June 2016).

<sup>25</sup> See Form 1, *Small Claim Summons*, available at <https://www.scotcourts.gov.uk/taking-action/small-claims> (date of access: 28<sup>th</sup> June 2016).



the summons to be served either by publication in a newspaper or by advertisement in the court house<sup>26</sup>.

The plaintiff may not serve the defendant a summons herself in a small claims case. The sheriff clerk will serve the summons on behalf of the plaintiff. This is usually done by recorded delivery<sup>27</sup>.

In England, Her Majesty's Courts & Tribunals Service is responsible for the administration of criminal, civil and family courts and tribunals. In order to initiate a claim in English and Welsh court one has to generally use the N1 form provided by Her Majesty's Courts & Tribunals Service<sup>28</sup>. One of the required fields on the N1 form is the address of the defendant. Thus the claim may not be able to go forward even if only the postcode is missing – this requires special approval from the judge<sup>29</sup>.

To find an address for a claim, the plaintiff may search public records through the Electoral Roll, a comprehensive source of addresses for adults in the United Kingdom. In England and Wales, there are two versions of the Electoral Roll: the “electoral register” and the “open register.” The electoral register is unedited and includes all people who are registered to vote<sup>30</sup>. Voter registration is mandatory in the United Kingdom for people over 16 (refusal of registry to vote results in a fine)<sup>31</sup>. The electoral register is used by public authorities for elections, duties relating to security, and credit checks. A copy of the electoral register is also available at the British Library and local voting councils<sup>32</sup>.

The open register is an edited version of the electoral register, and is available for sale to any person or business. It is used by businesses, charities, debt collection agencies, marketing firms, landlords, and local councils<sup>33</sup>. It includes the details of everyone in the electoral register except those who have asked to opt out. Citizens can also register to vote anonymously if they can show good reason to do so, *i.e.* concerns for their safety, at their local agency<sup>34</sup>.

### Ireland

Under the Irish District Court Rules for Civil Procedure<sup>35</sup>, a general “claim notice” in order to initiate civil proceedings must state the full name and address of the plaintiff (“plaintiff”) as

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<sup>26</sup> Scottish Courts and Tribunals, *Taking a Claim to Court*, p. 26; available at: <https://www.scotcourts.gov.uk/taking-action/frequently-asked-questions/small-claims> (date of access: 28<sup>th</sup> June 2016).

<sup>27</sup> *Ibidem*.

<sup>28</sup> Current version of the N1 form is available at: <http://s3-eu-west-1.amazonaws.com/hmctsformfinder/n1-eng.pdf> (date of access: 28<sup>th</sup> June 2016).

<sup>29</sup> U.K. Ministry of Justice, *Notes for claimant on completing a claim form*, available at <https://www.fcho.co.uk/media/1167/claim-form-guidance-internet-and-intranet.pdf> (date of access: 28<sup>th</sup> June 2016).

<sup>30</sup> U.K. Legislation, The Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013, No. 3198 Schedule 3; available at: <http://www.legislation.gov.uk/en/uksi/2013/3198/schedule/3/chapter/2/made> (date of access: 28<sup>th</sup> June 2016).

<sup>31</sup> U.K. Government, *The electoral register and the 'open register': Overview* (2015). Information available at: <https://www.gov.uk/electoral-register/overview> (date of access: 28<sup>th</sup> June 2016).

<sup>32</sup> *Ibidem*.

<sup>33</sup> *Ibidem*.

<sup>34</sup> U.K. Government, *The electoral register and the 'open register': Opt out of the 'open register'* (2015). Information available at: <https://www.gov.uk/electoral-register/opt-out-of-the-open-register> (date of access: 28<sup>th</sup> June 2016).

<sup>35</sup> District Court (Civil Procedure) Rules 2014 (S.I. No. 17 of 2014); available at: <http://www.irishstatutebook.ie/eli/2014/si/17/made/en/print> (date of access: 29<sup>th</sup> June 2016).

well as the respondent<sup>36</sup>. If the plaintiff is unable to provide any of the information required to be specified in the claim notice, he must include a statement of the reasons why it was impossible to provide such information and “(t)he plaintiff must, when the claim notice is served or as soon as may be thereafter (whether by amendment or otherwise) provide such of the information required by this rule as was not included in the claim notice”<sup>37</sup>.

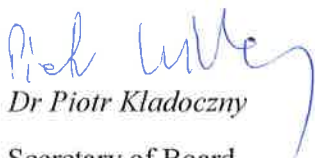
In the case of personal injuries cases, however, the plaintiff only need include the respondent’s address “if known” when filling out a personal injury summons.<sup>38</sup>

## 5. Conclusions

We hope that the presented written comments will provide the High Court with a detailed insight into practical problems applicants may face when trying to launch civil proceedings in Poland and how these problems may be addressed. Taking into account the arguments presented, the Helsinki Foundation for Human Rights believes that the subject of analysis in the case *Łukasz Orłowski against Poland* will present an opportunity for the European Court of Human Rights to reaffirm the standard that all limitations to the right of access to a court as defined in Article 6 § 1 of the Convention must meet the strict requirements of proportionality and necessity.

*These written comments have been prepared by Michał Kopczyński from the Strategic Litigation Programme of the Helsinki Foundation for Human Rights with the assistance of Amy Volz, a J.D. student from Harvard Law School. We would like to present our utmost gratitude to the Wardyński & Partners Law Firm with its Head Office in Warsaw for their help and valuable insight in producing of the part “Requirement to present the residential address of the opposing party” of these written comments.*

On behalf of the Helsinki Foundation for Human Rights,

  
Dr Piotr Kladoczny  
Secretary of Board

Helsinki Foundation for Human Rights

  
  
Danuta Przywara  
President of Board

Helsinki Foundation for Human Rights

<sup>36</sup> *Ibidem*, Order 40.3(1).

<sup>37</sup> *Ibidem*, Order 40.5(10).

<sup>38</sup> *Ibidem*, Order 40A.5(1).