

FOLLOW UP TO THE PREVIOUS REVIEW

1. Poland supported 144 of 185 recommendations.¹ Progress was made on advancing the rights of the people with disabilities, including through a new strategy for them and their carers for 2021-2030 that is focused on financial independence and educational inclusivity.
2. Poland noted recommendations essential for human rights protection, including on the right to freedom of peaceful assembly, participation in refugee relocation scheme and asylum-seeking, children's rights, the recognition of civil unions between same-sex persons and on separation of the functions of the Ministry of Justice and the Attorney General.² They address crucial problems in Poland: discrimination against LGBTI individuals,³ restrictions of freedom of peaceful assembly, attacks on the independence of the judiciary⁴ and violations of migrants and refugees' rights.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

3. Poland has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.⁵ The authorities announced the intention to withdraw from the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).⁶
4. Poland did not implement the 16 supported recommendations⁷ regarding independence of the judiciary, including of the Constitutional Tribunal. The government continued exerting political control over the judiciary, including common courts, the National Council of the Judiciary and the Supreme Court.
5. The Ombudsperson has fulfilled the function of a National Human Rights Institution (NHRI), working in accordance with the Paris Principles and was considered an important recourse for the protection of human rights in the country. It currently has A status according to the oversight body. There have been, however, systematic attacks on the Ombudsperson's independence: annual budget cuts to its office; repeated verbal attacks by officials; and a lawsuit filed against him by the public television channel for his legitimate statements (dismissed in court).⁸
6. At the request of the ruling party, the Constitutional Tribunal ruled against a provision allowing the current Ombudsman to continue perform his duties after the end of his term until a new Ombudsperson is elected. The candidates for an Ombudsperson were rejected five times, compromising the protection of human rights in Poland. The ombudsperson was finally elected after a nine-month delay.⁹

Independence of the judiciary

7. The July 2017 amendment to the Law on Common Courts empowered the Minister of Justice to appoint and dismiss presidents and vice-presidents of court.¹⁰ In December 2017, the parliament lowered the retirement age of the Supreme Court judges from 70 to 65, which was aimed at terminating the tenure of a large group of them and enabling the selection of new judges in their place.¹¹ In January 2018, parliament adopted new rules on the composition of the National Council of the Judiciary, which forced the premature termination of the four-year term of the office and politicized the election of new members of the Council.¹²
8. The Disciplinary Chamber of the Supreme Court, created in 2018, includes members elected by the politicized National Council of the Judiciary. In December 2019, an amendment to the law extending and aggravating the disciplinary responsibilities of judges was introduced.¹³ The amended disciplinary regime has been used to sanction judges who criticize justice reforms. The Disciplinary Chamber continues to work despite repeated warnings by the European Commission, orders for interim measures and financial penalties for non-compliance with Court of Justice

of the European Union (CJEU) orders.¹⁴

9. State authorities continue to refer cases to the politically compromised Constitutional Tribunal (CT) to challenge CJEU and European Court of Human Rights (ECtHR) judgments in an attempt to undermine their effects in the country. In October 2021, the CT ruled that Polish law takes primacy over EU law and that some provisions of the EU Treaty are unconstitutional.
10. The functions of Minister of Justice and the Prosecutor General are not separated. The Prosecutor's Office is still under political influence, which has resulted in prosecutors who defend the rule of law facing reprisals simply for conducting their profession. Some prosecutors were given only 48 hours' notice to move to a new post, in some cases hundreds of kilometers away.¹⁵

THE HUMAN RIGHTS SITUATION ON THE GROUND

Discrimination

11. Poland accepted six recommendations to amend the Criminal Code to investigate and prosecute hate crimes on the grounds of age, disability, sexual orientation and gender identity, but has not done so. Similarly, necessary measures to combat discrimination based on race, sex, nationality, ethnicity and religion were not introduced.¹⁶
12. However, the situation of LGBTI people in Poland has worsened significantly since the last review. A governmental electoral campaign targeting LGBTI people has led to a well-documented increase of homophobia, transphobia and biphobia¹⁷, especially the introduction of so called "LGBT ideology-free zones" in 94 local government areas by June 2020¹⁸ and repeated targeted and smear attacks, harassment, profiling and policing of human rights defenders (HRDs) advocating for LGBTI rights.¹⁹
13. Since 2019, the Code of Petty Offenses has been increasingly instrumentalized by the authorities to target and penalize people, particularly LGBTI advocates, restricting their ability to participate in public life and events.
14. On 20 July 2019, Amnesty Poland documented the inadequate police protection provided to the 1000 participants of the Equality March in Białystok, who were violently attacked by 4000 counter protesters throwing firecrackers and cobblestones.²⁰ Two of the most violent attackers were charged with battery and sentenced to one year's imprisonment and a fine, suspended for three years.
15. Access to human rights education and sexual education is at risk. A proposed amendment to the Education law that sought to ban from schools NGOs (such as Amnesty International) perceived not to follow the ruling party's programme to undermine human rights was vetoed by the President in March 2022. Further work on the amendment is ongoing.²¹

Right to asylum

16. Since 2015, there have been ongoing reports of pushbacks of asylum-seekers at border crossings, mainly in Terespol. In 2017, cases were brought to the UN Human Rights Committee and the ECtHR alleging that Border Guards did not allow asylum seekers to submit asylum applications and that individuals were repeatedly denied entry to seek international protection, which violates the international obligation of non-refoulement.²²
17. In August 2021, the crisis on the Polish-Belarusian border worsened, with 32 Afghan asylum seekers pushed back to Belarus by Polish border guards.²³ Despite two interim measures by the ECtHR, Poland failed to provide the group with food, water, shelter, medical assistance and access to lawyers.²⁴

18. Thousands of asylum seekers and migrants have tried to cross the border from Belarus to Poland since August 2021, as a result of Belarus' coordinated activities to bring people to the border and compel them to cross.²⁵
19. The Polish authorities closed its borders to people attempting to enter the country and ordered them to immediately leave its territory.²⁶ In October 2021, parliament adopted amendments to the Law on Foreigners and the Law on Granting Protection to Foreigners under which those who "cross the border illegally" must "leave the territory of Poland" and "are banned from re-entry",²⁷ making it impossible for people who enter irregularly to seek asylum in Poland.
20. On 2 September 2021, the President declared a state of emergency on the border, which prohibited access to the area, including journalists, media workers and NGOs.²⁸ The November 2021 amendment of the Law on the border protection empowered the Minister of Interior to ban entry to the border area without time limits, impeding any monitoring and reporting.²⁹ The number of people held in guarded detention centers increased significantly, including families with children.³⁰

Women's rights

21. Despite Poland having accepted 10 recommendations³¹ on domestic and gender-based violence, including two recommendations³² on implementation of the Istanbul Convention, the government announced initial steps to withdraw from the Convention.³³
22. On 30 July 2020, the Prime Minister requested the CT to verify the Istanbul Convention's compliance with the Polish Constitution.³⁴ On 20 August 2020, the Prosecutor General supported the withdrawal.³⁵ Both processes are pending.
23. As the legal definition of domestic violence still does not include economic violence, this issue is not addressed in the systemic efforts to prevent and prosecute domestic violence. It was also not included in the National Programme for Preventing Domestic Violence 2014-2020.³⁶
24. The legal definition of rape is not based on consent but on breaking a person's will by force, illegal threat or deceit, meaning that non-consensual intercourse which takes place without the use of threat, deceit or violence is not considered rape.³⁷ According to established case law, if a survivor failed to resist physically, it is not considered rape.³⁸

Sexual and reproductive rights

25. Since the last review, sexual and reproductive rights have been further limited and consistently attacked, including access to abortion, contraception and comprehensive sexuality education.³⁹
26. In reply to a motion from governing party MPs, the Constitutional Tribunal ruled on 22 October 2020 that abortion in cases of severe and fatal fetal impairment was unconstitutional and should not be allowed. This ruling further limits access to abortion in Poland, already heavily restricted, and renders illegal most of the abortion cases in Poland (over 90% of abortions were taking place on this ground).⁴⁰
27. The ruling caused great social unrest and mass protests that were met with police violence. As a result, people in need of abortion have to travel abroad. While the official statistics recorded only around 1000 abortions per year,⁴¹ according to civil society data, more than 30,000 people accessed abortions either by travelling abroad or by ordering abortion medication from outside Poland⁴². Four draft bills in parliament would restrict access to abortion even further.⁴³

28. In 2017, Parliament voted to end availability and access to over-the-counter emergency contraception.⁴⁴ This, alongside many other restrictions in access to contraception, as well as the lack of access to contraceptive-related information and comprehensive sexuality education, seriously violates human rights and puts people at risk. It has also made Poland the country with the worst access to contraception in Europe.⁴⁵
29. In April 2020, a bill criminalizing the provision of information about sexuality to minors (persons below 18 years old) was discussed in the Parliament and passed through the first hearing.⁴⁶
30. Human rights defenders working on sexual and reproductive rights (SRR) face harassment and persecution from both state and non-state actors opposing the provision of safe and legal abortion services. In March 2021, a bomb threat was sent to numerous NGOs working on women's rights. Women human rights defenders (WHRDs) were targeted by harmful and stigmatizing public smear campaigns - they were labelled as "murderers" and their faces were publicly shown.⁴⁷ Dozens of activists are under investigation or prosecuted either for participating in the protests against abortion restrictions or for providing abortion-related information.⁴⁸

Freedom of peaceful assembly

31. Demonstrations organized by critics of the government and the pro-governmental ones do not enjoy equal access to public spaces, nor are they equally protected by the police.⁴⁹
32. In July 2017, thousands of people in over 100 cities took to the streets to protest against the reform of the judiciary. Police responded with heavy-handed security measures in the area around Parliament and at the Presidential Palace, curtailing the demonstrators' ability to protest within sight and sound of their audience. The Police detained dozens of peaceful protesters, used constant and varied forms of surveillance, also including by asking protesters to provide identification during the protest, as well as threatening them with criminal charges and prosecutions. Many protesters were charged after the protest for breach of peace and violating the law on assembly.⁵⁰
33. LGBTI people organizing Pride parades have faced particular challenges. In October 2021, the Parliament debated a draft law submitted by the non-governmental organization "Stop LGBT" aiming at prohibiting any form of "promotion" of same-sex relationships.⁵¹
34. In May 2020, during the presidential campaign, police arrested hundreds of peaceful protesters simply for peacefully protesting in the streets and imposed heavy fines. The police especially targeted protesters demanding respect for the independence of the judiciary and those criticizing the lack of support for small companies during the Covid-19 lockdown.⁵²
35. In November 2020, the Constitutional Court's ruling on the unconstitutionality of abortion triggered mass demonstrations. The police responded with unnecessary and excessive force against protesters and journalists, including use of batons and pepper spray. The January 2021 publication of the ruling led to further protests. During demonstrations held on 27 January in Warsaw, the police arrested 20 protesters and additionally filed 250 cases alleging administrative offences. The police took the arrested protesters to stations outside Warsaw, which hindered their access to lawyers.⁵³

Freedom of expression

36. People deemed to be critical of the state, including certain judges, prosecutors, journalists, and HRDs, especially women, LGBTI and environmental activists, have been targeted with harassment, strategic lawsuits against public participation (SLAPPs), disciplinary proceedings, slander, smear campaigns and threats, all exacerbated by the failure of the authorities to launch proper investigations into such incidents.⁵⁴

37. Three activists charged in 2019 with “offending religious beliefs” for possessing and distributing posters and stickers depicting the Virgin Mary with an LGBTI rainbow halo were acquitted in January 2022 by the Płock Regional Court.⁵⁵
38. In November 2021, the Warsaw District Court found journalist Ewa Siedlecka guilty of criminal defamation for articles she wrote in 2019 and sentenced her to a fine. Siedlecka exposed the actions of the then deputy justice minister, whom she alleged was targeting judges who opposed reforms in a way that undermined the independence of the judiciary.⁵⁶
39. Public television (TVP) put in question its independence after supporting the ruling party’s hateful narrative and being highly critical towards the opposition and minorities, mainly migrants and LGBTI community.⁵⁷

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Poland to:

International Law

40. Ratify the Convention for the Protection of All Persons from Enforced Disappearance.

Independence of judiciary

41. End the harassment of judges and prosecutors critical to the judicial reforms and defending the rule of law.

Human Rights Defenders

42. End the harassment of activists for offending religious beliefs and cease any further misuse of this term.
43. Stop instrumentalizing petty offences and criminal proceedings against activists and peaceful protesters.
44. Ensure prompt, thorough, independent and impartial investigations into threats and attacks against human rights defenders.

Discrimination

45. As previously recommended,⁵⁸ amend the Criminal Code to provide that crimes motivated by discrimination on the grounds of sexual orientation or gender identity are investigated and prosecuted as hate crimes.
46. Fully implement the Istanbul Convention on preventing and combating violence against women and domestic violence, especially in terms of consent-based rape laws and definition of economic violence.

Women’s rights

47. Amend the legal definition of rape in the Criminal Code to non-consensual intercourse.
48. Amend the current definition of domestic violence to include economic violence.

Sexual and reproductive rights

49. Ensure legal, timely and effective access to both safe abortion and contraception to all people who need it, in line with international human rights law and standards. To this end, decriminalize all aspects of abortion and refrain from criminalizing the provision of other sexual and reproductive health services and information, 59 and identify and remove any access barriers.

50. Refrain from criminalizing comprehensive sexuality education (CSE) and ensure its provision to all children and adolescents both in and outside of school, in line with international law and standards.

Right to asylum

51. End pushbacks and collective expulsions of asylum seekers, migrants and refugees.
52. Ensure access to territory to those seeking protection and individual assessment of all asylum claims.
53. Lift the ban on media, humanitarian and other civil society organization accessing the restricted area in order to provide assistance.

Freedom of expression

54. End the harassment and intimidation of individuals perceived as critical of the government's policies, including journalists, human rights defenders, judges and prosecutors.
55. Decriminalize defamation and ensure it is treated as a matter of civil litigation.
56. Ensure the independence and editorial freedom of the public broadcasting service to allow for a broad range of opinions to be voiced.

Freedom of peaceful assembly

57. Ensure that Pride parades are not arbitrarily banned and guarantee that LGBTI people can exercise their right to freedom of peaceful assembly without fear of reprisals.
58. Ensure that all demonstrations enjoy equal access to public spaces and that all individuals are equally protected by the police.
59. Ensure that any restriction on public assemblies is necessary and proportionate to a legitimate aim. Decisions to ban a demonstration should only be the last resort after a thorough assessment where no less restrictive means could achieve the desired aim.
60. Adequately train law enforcement officials in the adequate policing assemblies, including on international standards on the use of force.
61. Ensure that law enforcement officials refrain from arresting and harassing protesters solely for participating in a peaceful assembly.
62. Immediately release all individuals detained solely for exercising their right to peaceful assembly and drop all charges against them.

¹ A/HRC/36/14/Add.1, Recommendations: 120.64-5 (Kyrgyzstan, Israel)

² A/HRC/36/14/Add.1, Recommendations: 120.75 (Spain); 120.178 (Turkey); 120.99-100 (Haiti, Spain); 120.110 (Canada); 120.182 (Argentina).

³ In 2018-2021 ILGA's Annual Reports Poland placed last or next to last among EU countries regarding equality of the LGBTI people.

⁴ Both the CJEU and the ECtHR have repeatedly denounced the impact of judicial reforms. They found Poland's Constitutional Tribunal and the Supreme Court's Disciplinary Chamber incompatible with minimum standards that would guarantee judicial independence. In May 2021, in Xero Flor v Poland, the

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²⁶ Rozporządzenie Ministra spraw wewnętrznych i administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych, poz. 1536, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf>

²⁷ Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw, Dz.U. 2021 poz. 1918, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001918/T/D20211918L.pdf>

²⁸ Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 r. w sprawie wprowadzenia stanu wyjątkowego na obszarze części województwa podlaskiego oraz części województwa lubelskiego, poz. 1612, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001612/O/D20211612.pdf>

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³⁰ Marcin Wiącek, *List Rzecznika Praw Obywatelskich do Prezesa Sądu Okręgowego w Krośnie*, 25 January 2022, https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO_sad_25.1.2022.pdf

³¹ A/HRC/36/14/Add.1 Recommendations: 120.145 (Philippines), 120.147 (Turkey); 149-152 (Belgium, Sierra Leone, Australia, Croatia); 120.154-157 (Latvia, Chile, Israel, Islamic Republic of Iran);

³² Recommendations: A/HRC/36/14/Add.1, 120.146-7 (Bosnia and Herzegovina, Turkey)

³³ Ministerstwo Sprawiedliwości, *Wniosek w sprawie wypowiedzenia Konwencji Stambulskiej*, 25 July 2020,

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⁵⁷ Article 19, *Poland: Journalist's criminal defamation conviction threatens free speech*, 01 December 2021, <https://rsf.org/en/news/polish-public-broadcaster-peddles-government-hate-speech-presidential-election-run-1>

Article 19, Twitter, 24 April 2020, https://twitter.com/RSF_en/status/1253728383013453826

⁵⁸ A/HRC/36/14/Add.1, Recommendations 120.72-73 (Belgium, Norway)

⁵⁹ Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19930170078/U/D19930078Lj.pdf>