

Council of Europe contribution for the 41st UPR session (Oct-Nov 2022) regarding Poland

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

The CPT's report on the 2019 ad hoc visit to Poland:



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The objective of the visit was to review the implementation of the CPT's long-standing recommendations concerning the treatment of persons in police custody. The delegation's findings during the 2019 ad hoc visit clearly indicated that persons taken into police custody in Poland continued to risk being ill-treated, in particular at the time of apprehension. This was a source of ongoing serious concern to the CPT and demonstrated the need for the Polish authorities to step up their efforts in this area. Furthermore, the absolute absence of progress as regards the fundamental safeguards against ill-treatment advocated by the CPT, namely the right of access to a lawyer and to a doctor, the right to notify one's detention to a third party and the right to be informed of the above-mentioned rights, was the source of the Committee's deepest concern after the 2019 ad hoc visit to Poland. It is the CPT's view that serious deficiencies observed once again by its delegation had a persisting and systemic character, which appeared in an even more negative light when set against the ongoing phenomenon of ill-treatment of persons in police custody. Based on its delegation's findings from this ad hoc visit, the Committee considered that if no expedient and decisive action was taken by the Polish authorities, the risk of persons in police custody being subjected to ill-treatment was likely to increase further in the near future.

Executive summary:



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Government response:



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Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

Independence of the judiciary

1. Commissioner Mijatović visited Poland from 11 to 15 March 2019, focusing on the **independence of the judiciary and the prosecution service** as well as **women's rights**,

gender equality and domestic violence. Following her visit, the Commissioner published a [report](#) in June 2019.



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The government of Poland provided [comments](#) on the report.



Response of the Gov_Poland.pdf

Regarding the **independence of the judiciary and the prosecution service**, the Commissioner found that Poland's judicial reform, accompanied by a **polarising public campaign to discredit judges**, had fundamentally affected the functioning and independence of all key building blocks of the country's justice system, leading to repeated protests by the legal professions and the general public. She welcomed the reinstatement of the **forcibly retired judges of the Supreme Court and of the Supreme Administrative Court** but called on the authorities to urgently resolve the deadlock compromising the **independence and credibility of the Constitutional Tribunal** and to bring the **composition of the National Council for the Judiciary** back in line with Council of Europe standards and the Polish Constitution. The Commissioner criticised the **dismissal and replacement of hundreds of court presidents, vice-presidents, and prosecutors**, as well as by **disciplinary proceedings instituted against judges and prosecutors**, urging the authorities to ensure that such proceedings are not instrumentalised and to secure the right to a fair trial of any person subjected to them. The Commissioner further invited Poland to **separate the functions of Minister of Justice and Prosecutor-General** and to limit each office's powers vis-à-vis judges and prosecutors. She stressed that improving the accountability or efficiency of the justice system may not be pursued at the expense of judicial independence and called on the executive and the legislature to avoid **undermining public confidence in the judiciary**.

2. On 13 January 2020, Commissioner Mijatović published a [letter](#) addressed to Tomasz Grodzki,



CommHR_DM_2020.pdf

Marshal of the Senate of Poland, in connection with a bill adopted earlier by the lower house of the Parliament which introduced several **new types of disciplinary offences by judges** accompanied in many cases by **severe penalties**; provided **additional powers to the Minister of Justice** and the Minister-appointed chief disciplinary attorneys; **marginalised judicial self-government bodies**; and created new rules for the selection of candidates for the post of First President of the Supreme Court. Noting that the legislation had been **fast-tracked and adopted without meaningful public consultation**, she considered that the new amendments were designed to further **silence dissent among critical judges and prosecutors** and subordinate Poland's judiciary to the country's executive.

Women's sexual and reproductive health and rights

3. In her [2019 country visit report's](#) section on **women's rights**, the Commissioner noted with regret that the Polish authorities had yet to adopt the necessary legislation to ensure the **accessibility and availability of legal abortion in practice**. She called on them to reject any legislative proposals that seek to further erode **women's sexual and reproductive rights** and invited them to consider making abortion legal on a woman's request in early pregnancy, and thereafter throughout pregnancy to protect women's health and lives and ensure freedom from ill-treatment. She also encouraged the authorities to **eliminate barriers in access to contraception**. Commending Poland for its **solid legal framework for equality between men and women**, the Commissioner recommended that the authorities promptly adopt a **new national action plan on gender equality** as well as programmes and measures to further the advancement of women and their political participation and to prevent and combat sexism. She also welcomed the **significant increase in public funding for and availability of public childcare**. The Commissioner further welcomed the Polish authorities' stated **commitment to combating domestic violence** and encouraged them to give effective application to the **Council of Europe Istanbul Convention**, including by ensuring the implementation of existing laws and providing enough quality shelters for victims. She also urged the authorities to ensure a safe and favourable **environment for women's rights organisations**, expressing concern about the negative impact of reported **cuts in public funding for such organisations**.



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4. On 11 February 2020, the Commissioner published her [submission](#) to the Committee of Ministers of the Council of Europe in the context of the supervision of the execution of the judgments handed down by the European Court of Human Rights in three cases against Poland regarding access to abortion (no. 5410/03 Tysic v. Poland, no. 27617/04 R. R. v. Poland, and no. 57375/08 P. and S. v. Poland). The Commissioner's submission reviewed Poland's legal framework and practice regarding **access to safe and lawful abortion**, the use by medical professionals of **conscience-based refusals to perform abortions**, and the issue of **lack of effective remedies**.



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5. On 10 November 2021, the Commissioner published her [written observations](#) to the European Court of Human Rights in the cases of [K.B. v. Poland and 3 other applications](#), [K.C. v. Poland and 3 other applications](#) and [A.L. - B. v. Poland and 3 other applications](#) concerning abortion rights in Poland. The Commissioner observed that the October 2020 ruling of Poland's Constitutional Tribunal resulting in a **near-total ban on abortions** by removing one of the three exceptions for accessing abortion care, to which she had [reacted](#) at the time, **worsened the already overwhelmingly prohibitive legal and procedural framework governing access to safe and legal abortion care** in Poland. Noting the broader context of the **worsening situation with regard to women's access to sexual and reproductive health and rights** in Poland, the Commissioner concluded that the ruling created a situation which **removed Poland even further from its obligations under international human rights law**, particularly those stemming from Articles 3 and 8 of the European Convention on Human Rights as well as the principle of non-retrogression.



**CommHR Third party
intervention Poland**

LGBTI rights

6. In response to the emergence of a **widespread pattern of stigmatisation and statements targeting LGBTI people** in Poland, on 3 December 2020 Commissioner Dunja Mijatović published a [memorandum](#) on this topic. The memorandum followed online consultations held with the Polish authorities, the Polish Ombudsman and NGOs working on the rights of LGBTI people. The government of Poland provided comments on the memorandum. In the memorandum, the Commissioner called on public officials and opinion makers in Poland to stop promoting an **atmosphere of hate and intolerance vis-à-vis LGBTI people** and to **improve respect for their human rights**. She strongly urged all public authorities, politicians and opinion leaders in Poland not to engage in **hate speech or any discourse stigmatising LGBTI people** and to firmly denounce such actions and statements, including when they come from private parties. The Commissioner further called for **anti-LGBT declarations and charters adopted by some local governments and municipalities in Poland** to be revoked and urged the Polish government to ensure that projects and initiatives which directly or indirectly promote hate and intolerance against LGBTI people do not receive public support. The Commissioner also called for the rejection of several **bills targeting LGBTI people** pending in the Polish parliament. The Commissioner also expressed concern regarding **numerous accounts of harassment and intimidation of LGBTI activists in Poland by law enforcement agencies and the public prosecution service**. She also noted with concern the **increasing practice of banning Pride (equality) marches** under the pretence of promoting public safety. Lastly, the Commissioner called on Poland to draw up, in close consultation with civil society, the **new national action plan on equality** which would include provisions explicitly addressing the discrimination of LGBTI people, and to **support and promote education campaigns** to raise public awareness about LGBTI people.



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7. On 30 October 2020, Commissioner Mijatović published her [written observations](#) to the European Court of Human Rights in the cases of [Katarzyna Formela and Sylwia Formela v. Poland and 3 other applications, Cecylia Przybyszewska v. Poland and 9 other applications, and Antoni Meszkes v. Poland](#) which concern **the absence in Poland of a legal framework for the recognition of stable same-sex relationships.**



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FORMELA v.
POLAND.pdf

Migration and human rights

8. On 25 August 2021, the Commissioner issued a [statement](#) addressing the **humanitarian situation of a group of people stuck in a vulnerable situation at the Polish-Belarusian border.** The Commissioner stressed that pushing people back, denying them access to fair asylum procedures or simply leaving them stuck in a humanitarian emergency could not be the response, and called on Poland to take immediate principled action to **protect the human rights of the stranded people** and to ensure that their **humanitarian needs** were met. On 20 September, the Commissioner [reacted](#) to reports of **people found dead at the Polish-Belarusian border.**

From 15 to 18 November 2021, the Commissioner carried out **a mission to Poland to assess the humanitarian and human rights situation along the country's eastern border with Belarus.** On 19 November, the Commissioner issued a [statement](#) in which she called for **urgent action to protect the lives, dignity and human rights of people stranded in the border regions.** During her mission, the Commissioner heard many testimonies from asylum seekers and migrants, including entire families with small children, forced to spend weeks or even months in **squalid and extreme conditions in the cold and wet woods.** She received **consistent reports of summary returns (pushbacks)** of people who had crossed into Poland, including those who expressed clear intent to apply for asylum or persons with urgent medical conditions. She witnessed first-hand the **signs of their ordeal** due to such pushbacks and heard **disturbing allegations of severe ill-treatment, sexual violence and other abuses suffered at the hands of state agents in Belarus.** The Commissioner called on Poland to **end all pushbacks** and to amend its legislation which undermined the right to seek asylum and the associated safeguards, including the right to an effective remedy. The Commissioner observed that Poland's amended regulatory framework, in particular the **official ban on access to areas adjacent to the border, prevented civil society organisations and actors from providing vital humanitarian assistance and carrying out crucial monitoring and human rights work.** It also **prevented media from covering the situation on the border.** She

called on Poland to discontinue these **restrictions** and to urgently allow immediate and **unimpeded access for actors providing humanitarian and legal assistance** as well as the media to all areas along the border and to all people in need of help. Furthermore, the Commissioner praised the **lifesaving actions of many human rights defenders** and ordinary citizens, but expressed dismay at the **palpable atmosphere of hate and fear** that surrounded the provision of help, partly fuelled by the **inflammatory and dehumanising official narrative targeting migrants and refugees**. She called on Poland to support human rights defenders and to provide them with a **safe and enabling environment for their work**.

9. Following up on her mission, on 1 December 2021 the Commissioner issued a [statement](#) concerning amendments to Poland's Border Protection Act, adopted the day before. She observed that the **new legislation effectively prolonged many of the restrictive measures** put in place by the country's earlier state of emergency. In particular, the Commissioner noted that the new rules subjected journalists' access to the border areas to special permissions and that they did not explicitly guarantee **access by humanitarian actors, providers of legal aid or human rights monitors**.

Situation of the National Human Rights Institution (Ombudsman)

10. In a [letter](#) addressed to the Minister of Foreign Affairs of Poland, Zbigniew Rau, and published on 22 October 2020, Commissioner Mijatović raised her concerns about a constitutional challenge to the provision in the Polish law allowing Ombudsmen to continue to exercise functions in-between mandates. On 15 April 2021, the Commissioner [cautioned](#) that the ruling issued earlier that day by Poland's Constitutional Court created a **worrying gap in the continuity and functioning of the Ombudsman institution** between terms of office.



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Media freedom

11. On 16 March 2021, the Commissioner published a [letter](#) sent to the Prime Minister of Poland, Mateusz Morawiecki, urging the government to ensure that **two draft laws concerning the media sector** respect European human rights standards, specifically those related to freedom of expression, media pluralism and the right to respect for privacy. The Commissioner expressed concern that one of the proposed new laws would, in practice, lead to the **suffocation of independent media**.



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Criminal justice

12. On 22 May 2019, the Commissioner sent a [letter](#) addressed to Stanisław Karczewski, the then-Speaker of the Senate of Poland, raising concerns on a proposed set of amendments to Poland's Criminal Code which would **deprive certain categories of life prisoners of eligibility**

for conditional release. While recognising member states' duty to protect members of the public from violent crime, the Commissioner pointed out that the proposed amendments ran afoul of the case-law of the European Court of Human Rights, which requires that life prisoners be afforded a prospect - even if it is tenuous or distant - of an eventual release, as well as the possibility of a review of their sentence.



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Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Conclusions on Poland (adopted on 21 March 2018 / published on 15 May 2018)



**ECRI_2018_25_Poland.
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Steering Committee on Anti-Discrimination Diversity and Inclusion (CDADI)

Under the authority of the Committee of Ministers and bearing in mind the Council of Europe's legal standards, the jurisprudence of the European Court of Human Rights and the findings and recommendations of the relevant monitoring mechanisms, the CDADI steers the Council of Europe's intergovernmental work to promote equality for all and build more inclusive societies, offering effective protection from discrimination and hate and where diversity is respected. The work of the CDADI shall take into account the work of the European Commission against Racism and Intolerance (ECRI), without prejudice to the latter's mandate.

The CDADI advises the Committee of Ministers on all questions within its mandate, including preventing and combating hate speech and discrimination on the grounds covered by ECRI, with a particular focus on fighting anti-Gypsyism and improving the active participation and inclusion of Roma and Travellers in society, safeguarding the rights of persons belonging to national minorities and the use of regional or minority languages, and promoting intercultural integration.

The CDADI promotes and facilitates thematic exchanges and peer reviews of experience and good practice among Council of Europe member States to develop common policy responses, analyse implementation and fulfil any other task assigned to it by the Committee of Ministers.

In 2021, the CDADI prepared a [Compilation of promising and good practices on "Responses to the Covid-19 pandemic in the fields of non-discrimination, diversity and inclusion"](#) that cover examples

from most CoE member States. Based on that work, it prepared [Guidelines of the Committee of Ministers of the Council of Europe on upholding equality and protecting against discrimination and hate during the COVID-19 and similar crises](#), together with an [Explanatory memorandum](#), which were adopted by the Committee of Ministers on 5 May 2021



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Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention adopted its 4th Opinion on Poland on 6 November 2019.



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The Resolution CM/ResCMN(2020)12 on the implementation of the Framework Convention for the Protection on National Minorities by Poland was adopted by the Committee of Ministers on 21 October 2020 at the 1386th meeting of the Ministers' Deputies.



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European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. Since the entry into force, in July 2019, of the reform of the monitoring mechanism, the subsequent reports are presented at five-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

The Committee of Experts adopted its third evaluation report on Poland on 30 September 2021.



ECRML_third_evaluation_report_Poland.pdf

The Committee of Ministers adopted Recommendation CM/RecChL(2022)2 on the application of the European Charter for Regional or Minority Languages by Poland on 16 February 2022 at the 1425th meeting of the Ministers' Deputies.



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Ad hoc Committee of Experts on Roma and Traveller Issues (ADI-ROM)

Under the authority of the Committee of Ministers and as a subordinate body to the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), the Committee of Experts on Roma and traveller Issues (ADI-ROM) is given the general task of assisting member states in the development and implementation of successful Roma and Traveller inclusion policies by overseeing the implementation of the Strategic Action Plan for Roma and Traveller Inclusion (2020-2025), reviewing the implementation of relevant national legislation, policy and practice, exchanging information and experience, and identifying examples of effective measures on Roma and Traveller inclusion.

In 2021, the ADI-ROM prepared a Compilation of examples of good practice of Roma and/or Traveller inclusion at national, regional or local levels, to be adopted in 2022. The following deliverables are inscribed in the ADI ROM terms of reference for the coming period: Mid-term review report on the implementation of the Strategic Action Plan for Roma and Traveller Inclusion (2020-2025); Draft Recommendation on equality for Roma and Traveller women and girls; Capacity-building programme and tools supporting the implementation of Recommendation [CM/Rec\(2020\)2](#) at national level; Feasibility study and possible draft Recommendation on desegregation and inclusion policies and practices in the field of education including Roma and Traveller children; Handbook on democratic governance as well as representation and participation of Roma and Travellers in public and political life; Final evaluation report on the implementation of the Strategic Action Plan for Roma and Traveller

Inclusion 2020-2025 and at least two thematic reports per year, emanating from the two, possibly three, thematic visits foreseen per year.



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The Polish authorities will be hosting the Committee of Experts on Roma and Traveller Issues (ADI-ROM) thematic visit to prepare a thematic report on Substance use and Trafficking: Prevalence, Prevention and Treatment: Target Group - Specific Evidence and Intervention in May 2022.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

GRETA evaluation report (2nd evaluation round):



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[Press release](#)

Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence ([Istanbul Convention](#), CETS No. 210) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality

between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

1. a country-by-country evaluation procedure;
2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.

[GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

The implementation of the provisions of the Istanbul Convention by [Poland](#) was monitored in 2020 and GREVIO's first [baseline evaluation report](#) was published in September 2021.



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uation_report_Poland.**

The Committee of the Parties to the Istanbul Convention has adopted its [recommendations](#) in relation to Poland at its meeting in December 2021.



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Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "[the Lanzarote Convention](#)", requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The "Lanzarote Committee" (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme. At the end of each round, the Lanzarote Committee adopts "implementation reports" which contain its evaluation of the situation ("monitoring findings"). To assess whether Parties have acted upon its monitoring findings, the Lanzarote Committee carries out compliance procedures. To date (2022) this has been done with respect to monitoring findings concerning the protection of children affected by the refugee crisis from sexual exploitation and sexual abuse. Compliance procedures to assess measures taken with respect to the Committee's monitoring findings concerning the protection of children against sexual abuse in the circle of trust should be launched before the end of 2022.

Poland ratified the Lanzarote Convention on 20 February 2015 and it entered into force in its respect on 1 June 2015.

Since Poland became a Party to the Convention after the launching of the 1st monitoring round, the Lanzarote Committee did not assess the situation in its respect on the “Protection of children against sexual abuse in the circle of trust”.

By the end of 2022, the Committee however plans to launch an evaluation of the situation with respect to this theme for all Parties it had not assessed during its 1st thematic monitoring round and this will thus include Poland.

Poland was assessed under the urgent monitoring round on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse” and on the second monitoring round on “Protecting children against sexual exploitation and sexual abuse: Addressing the challenges raised by child self-generated sexual images and/or videos.”

Urgent monitoring round on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse”

To respond to the urgent migrant and refugee situation in Europe, the Lanzarote Committee decided in 2016 to address the protection of children affected by the refugee crisis from sexual exploitation and sexual abuse through an urgent monitoring round. This resulted in a [special report](#) published in March 2017. The information submitted by Poland in the context of this round is accessible [here](#). To follow-up on the Special report and its monitoring findings, the Committee carried out a compliance procedure to assess the conformity of Parties with the recommendations urging them to act (the “urge” recommendations), as well as those considering that they should act (the “consider” recommendations).



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Following the compliance procedure, the recommendation still requiring Poland to take steps to implement the Lanzarote Convention effectively in the context of this monitoring round is as follows:

On the protection of children affected by the refugee crisis from sexual exploitation and sexual abuse, the Lanzarote Committee:

- **Considers** that Poland should encourage and support the setting up of specific information services such as telephone or Internet helplines to child victims of sexual exploitation and sexual abuse affected by the refugee crisis as well as persons wishing to help them to provide advice in a language which is understandable to them (R32).¹

2nd thematic monitoring round: Protecting children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs): Addressing the challenges raised by child self-generated sexual images and/or videos.

This was carried out between October 2017 and March 2022 and was dedicated to “Protecting children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)”, with a focus on “Addressing the challenges raised by child self-generated sexual images and/or videos”. It led to the adoption of an implementation report, which will soon be made available on the [website of the Lanzarote Committee](#). The information submitted by Poland in the context of the 2nd monitoring round is available [here](#).



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The recommendations requiring Poland to take steps to implement the Lanzarote Convention effectively in the context of this monitoring round are as follows:

On the legal frameworks:

- **Requests** that Parties ensure in their legal framework² that a child will not be prosecuted when he/she possess:
 - their own self-generated sexually suggestive or explicit images and/or videos
 - self-generated sexually suggestive or explicit images and/or videos of another child with the informed consent of the child depicted on them;
 - the self-generated sexually suggestive or explicit images and/or videos of another child as a result of receiving them passively without actively asking for them (Recommendation II-6).
- **Requests** that Parties ensure in their legal framework³ that a child will not be prosecuted for sharing his/her sexual images and/or videos with another child when such sharing is voluntary, consensual and intended solely for their own private use (Recommendation II-8).
- **Requests** that Parties that have not already done so ensure that the distribution or transmission by children of self-generated sexually explicit images and/or videos of other children is

¹ On 7th of October 2021 Poland was considered only to partially comply with the recommendation at stake. More details on what is still lacking will be made available on the [Lanzarote Committee's website](#) at a later stage

² The expression “legal framework” is not limited to legislation but should be understood in a broader way, e.g., through prosecutorial guidance or practice.

³ The expression “legal framework” is not limited to legislation but should be understood in a broader way, e.g., through prosecutorial guidance or practice.

prosecuted as a last resort when such images and/or videos qualify as “child pornography” in accordance with Article 20(2) Lanzarote Convention (Recommendation II-9).

On investigations and prosecution:

- Mindful of the different contexts in the Parties as recalled in para 235 of the Explanatory Report, **requests** those Parties that are not already doing so to ensure that law enforcement units, services or persons specialised in ICT facilitated sexual offences against children are adequately financed to ensure sufficient resources, including staff, equipment and training (Recommendation III-3).
- Mindful of the different contexts in the Parties as recalled in para 235 of the Explanatory Report, **requests** those Parties that are not already doing so to ensure that prosecution units, services or persons specialised in ICT facilitated sexual offences against children are adequately financed to ensure sufficient resources, including staff, equipment and training (Recommendation III-7).
- **Requires** all Parties to ensure that investigations and criminal proceedings in ICT facilitated sexual offences against children are treated as priority and carried out without any unjustified delay (Recommendation III-30).

On international cooperation:

- **Requests** all Parties to extend their international cooperation with other Parties to improve the effective implementation of the Lanzarote Convention (Recommendation V-3).
- **Requires** Poland to ensure that the victims of sexual exploitation or sexual abuse in matters related to child self-generated sexual images and/or videos in the territory of Parties to the Lanzarote Convention which are not members of the European Union other than the one where they reside, may make a complaint before the competent authorities of the State of their residence (Recommendation V-18).

On higher education curriculum and continuous training:

- **Requires** Poland to ensure that the persons who have regular contacts with children are equipped to identify any situation of sexual exploitation and sexual abuse of children:
 - in the education sector
 - in the health sector
 - in the social protection sector
 - in areas relating to sport, culture and leisure activities (Recommendation X-5).
- **Requires** Poland to ensure that the persons who have regular contacts with children are informed of the possibility for them to report to the services responsible for child protection any situation where they have “reasonable grounds” for believing that a child is a victim of sexual exploitation and sexual abuse of children, including online:
 - in the education sector
 - in the health sector
 - in the social protection sector
 - in areas relating to sport, culture and leisure activities (Recommendation X-6).

- **Requires** Poland to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities (Recommendation X-7).

Fight against corruption (GRECO)

The 'Group of States against Corruption' (GRECO) monitors all its 50 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report. GRECO has also an Ad hoc procedure for situations requiring urgent action.

Poland was evaluated in 2018 under the Fifth Evaluation Round on "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies". The corresponding [5th Round Evaluation report](#) was adopted by GRECO Plenary and made public in 2019. GRECO's [5th Round Compliance Report](#), assessing the implementation of recommendations was made public in 2021. Additional information from the authorities is due by 30 September 2022.



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Concerning the Fourth Evaluation Round on "Prevention of corruption in respect of members of parliament, judges and prosecutors", GRECO's [4th Round Interim Compliance Report](#), assessing the implementation of the recommendations, was made public in 2021. Poland is currently in non-compliance under the 4th round. Additional information from the authorities is due by 30 September 2022.



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Statistical data

On 31 December 2021, there were 97 cases (89 cases on 31 December 2020) against the Republic of Poland pending before the Committee of Ministers for supervision of their execution. Among these cases, 38 cases were “leading cases” evidencing different problems (33 leading cases on 31 December 2020). As of 31 December 2021, 34 cases or groups of cases (35 on 31 December 2021) were examined by the CM under the enhanced supervision procedure (see below).

In 2021, the CM was concerned with 8 new leading cases (4 new leading cases in 2020) and 34 new repetitive cases (18 new repetitive cases in 2020). The overall amount of just satisfaction awarded was 740.847 € (252.304 € awarded in 2020). In 2021, the supervision over execution of 35 cases against the Republic of Poland were closed by the adoption of a Final Resolution (31 cases closed in 2020).

Main cases / groups of cases under the Committee of Ministers’ supervision

Secret detention and ill-treatment of two persons in a CIA facility under US authority in Poland and their transfer from Poland to the USA despite the risk of a denial of justice before US military commissions using evidence obtained under torture and the risk of death penalty.

Al Nashiri v. Poland:



**CASE OF AL NASHIRI
v. POLAND.pdf**

Refusal of border guards to receive asylum application and summary removal to a third country with a risk of refoulement to and ill-treatment in the country of origin. Collective expulsion of aliens in a wider state policy of refusing entry to foreigners coming from Belarus.

M.K. and others v. Poland:



**CASE OF M.K. AND
OTHERS v. POLAND.p**

Unlawful deprivation of liberty of a juvenile in correctional proceedings without specific court order and adequate judicial review.

Grabowski v. Poland:



**CASE OF GRABOWSKI
v. POLAND.pdf**

Excessive length of proceedings in civil, criminal and administrative proceedings, lack of an effective remedy.

Bak, Majewski, Rutkowski, Beller v. Poland:



**CASE OF RUTKOWSKI
AND OTHERS v. POLA**



**CASE OF BELLER v.
POLAND.pdf**

Absence of an adequate legal framework for the exercise of the right to therapeutic abortion in the event of disagreement between the patient and the specialist doctor. Lack of effective access to reliable information on the conditions and procedures for a lawful abortion.

P. and S., Tysiac, R.R. v. Poland:



**CASE OF P. AND S. v.
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**CASE OF TYSIAC v.
POLAND.pdf**



**CASE OF R.R. v.
POLAND.pdf**

Infringement of the right to a tribunal established by law on account of the participation in the Constitutional Court's panel that in 2017 rejected the applicant company's constitutional complaint of Judge M.M., whose election to the Constitutional Court in 2015 was vitiated by grave irregularities that impaired the very essence of the right at issue.

Xero Flor w Polsce sp. o. o. v. Poland:



**CASE OF XERO FLOR
w POLSCE sp. z o. o. v**

Infringement of the right to access to court on account of the premature termination of the applicants' term of office as vice-presidents of a regional court based on temporary legislation, which did not allow for examination either by an ordinary court or by another body exercising judicial duties.

Broda et Bojara c. Pologne :



**AFFAIRE BRODA ET
BOJARA c. POLOGNE**

Infringement of the right to tribunal established by law, since the judges of the Disciplinary Chamber in the Supreme Court that dismissed the applicant's cassation appeal against disciplinary penalty in 2019 were appointed in a deficient judicial appointment procedure involving the National Council of the Judiciary lacking independence from legislature and executive.

Reczkowicz v. Poland:



**CASE OF
RECZKOWICZ v. POLA**

Excessive use of force by the Police during the applicants' arrest in February 2015 and ineffective investigation in the circumstances of this incident, terminated with a final decision of a domestic

court on 20 July 2016.
Kuchta and Metel v. Poland:



**CASE OF KUCHTA
AND METEL v. POLAN**

For a more complete overview of the situation see the Country Factsheet and the Committee of Ministers' Annual Reports on its supervision activity (available on the website of the Department for the Execution of Judgments of the European Court of Human Rights). More detailed information on the status of execution in individual cases can be found through Hudoc-EXEC.

Country factsheet Poland.

[Poland \(coe.int\)](https://www.coe.int)

Annual reports. The 2021 annual report will also be available soon on this webpage.

<https://www.coe.int/en/web/execution/annual-reports>

Important cases closed recently

No important cases against Poland have recently been closed. The cases closed recently concern rather technical issues, solved notably through implementation of awareness-raising measures, or are considered repetitive.

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.



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Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2017, concerning Poland, the Commission adopted three opinions on judiciary:

- on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws, on the Draft Act amending the Act on the National Council of the Judiciary



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- on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts



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- on the Act on the Public Prosecutor's office, as amended



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