

Council of Europe contribution for the 27th UPR session (April-May 2017) 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.

On [25 June 2014](#), the CPT published a [report](#) following its most [recent visit](#) to Poland, which took place from 5 to 17 June 2013, together with the [response](#) of the Polish authorities. The visit provided an opportunity to assess the extent to which the recommendations made after previous CPT visits had been implemented. Particular attention was paid to the treatment of persons in police custody, and prison conditions (with a focus on prison health-care and prisoners classified as "dangerous").

The majority of the persons met by the delegation who were, or had recently been, detained by the police, indicated that they had been correctly treated. Nevertheless, the CPT's delegation did receive a significant number of allegations of physical ill-treatment of persons taken into police custody (including from detained juveniles). The CPT called upon the Polish authorities to pursue rigorously their efforts to combat ill-treatment by police officers.

The conditions at the police establishments visited were generally adequate, and in some cases even good, for the period of custody provided by law (i.e. maximum of 72 hours). Similarly, the material conditions of detention were found to be generally satisfactory in the four police establishments for children visited. Activities offered to juveniles could also be considered adequate for short stays.

In relation to the prisons visited, the delegation did not receive any allegations, nor gather any evidence of recent physical ill-treatment by staff at Lublin, Szczecin, Warsaw-Grochów or Warsaw-Mokotów Remand Prisons and at the three prison hospitals visited. However, at Bydgoszcz Remand Prison, the delegation received some isolated allegations of physical ill-treatment by custodial staff. Further, a few allegations of verbal abuse of foreign inmates were heard at Warsaw-Mokotów Remand Prison.

Inter-prisoner violence did not appear to be a problem at Bydgoszcz, Lublin, Warsaw-Grochów and Warsaw-Mokotów Remand Prisons. That said, at Szczecin Remand Prison, the delegation heard of some incidents of such violence.

Despite the various measures being taken by the Polish authorities, overcrowding remained a problem in all the prisons visited. The CPT called upon the Polish authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison.

The CPT also called upon the Polish authorities to revise as soon as possible the current norms fixed by legislation for living space per prisoner so that, in all penitentiary establishments, there is at least 4 m² per inmate in multi-occupancy cells and at least 6 m² in single cells.

The situation as regards the provision of organised activities to inmates in the establishments visited was still generally very unsatisfactory, in particular for remand prisoners.

As regards the so-called “dangerous” (“N” status) prisoners, the CPT welcomed the continued reduction in the number of such prisoners in the recent years. Having said that, the Committee remains of the view that the Polish authorities should refine the procedure for allocating a prisoner to “N” status, and for reviewing this allocation, with a view to ensuring that only those inmates who pose an on-going high risk if accommodated in the mainstream of the prison population are accorded “N” status. The CPT was also concerned to note the absence of any changes to the regime applied to “N” status prisoners, which remained very restrictive. The Committee called upon the Polish authorities to fundamentally review that regime and to develop individual plans aimed at providing appropriate mental and physical stimulation to such prisoners.

Turning to prison health-care services, the CPT found the level of health-care staff on the whole adequate at Bydgoszcz, Szczecin and Warsaw-Mokotów Remand Prisons; however, this was certainly not the case at Lublin Remand Prison. It is noteworthy that complaints about delays in gaining access to health care were heard in all the prisons. In addition, in Bydgoszcz, both at the Remand Prison and at the Prison Hospital, as well as at Warsaw-Grochów Remand Prison, the delegation received complaints from prisoners about the quality of the health care provided. The Committee asked the Polish authorities to take necessary remedial action.

The CPT also visited the Warsaw sobering-up centre, which made a positive impression on the delegation.

In their [response](#), the Polish authorities refer to training programmes and other steps taken to address the phenomenon of police ill-treatment. Further, information is provided on the measures taken to combat prison overcrowding, including by placing emphasis on non-custodial measures for remand prisoners and developing alternatives to imprisonment. Reference is also made to measures taken or envisaged to renovate and expand the Polish prisons. The Polish Government also informs the CPT of the efforts to increase the offer of activities for prisoners, to improve the standard of prison health-care and to address the CPT’s recommendations concerning the “N” status prisoners.

Council of Europe Commissioner for Human Rights

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

In a [statement](#) made on 8 July 2016, the Commissioner expressed concern at the adoption by the lower chamber of the Polish Parliament of a bill on the Constitutional Tribunal, which posed a serious threat to the rule of law.

In his report published in June 2016, the Commissioner examines four categories of human-rights related issues:


HR Comm visit
Poland report.pdf


HR Comm 4 issues
visit Poland.pdf

Regarding the legal and institutional framework, recent far-reaching legal changes raised important concerns in the field of human rights and as regards the country's full adherence to the rule of law and democratic principles; a common feature of these changes being their hasty adoption and the lack of inclusive and democratic debate. The paralysis of the Constitutional Tribunal was particularly worrying and a new surveillance law expanding the powers of law enforcement agencies, police forces and security services without establishing the necessary safeguards to avoid abuse also raised concerns. The ratification of a significant number of human rights treaties and the well-regarded Ombudsman's institution were positive points, but the latter institution must be guaranteed full independence through adequate resources and fair procures for lifting the Ombudsman's immunity.

As regards the administration of justice, the Commissioner welcomed efforts to address the excessive length of judicial proceedings and dysfunction of domestic remedy currently in place and to reduce the use of pre-trial detention. Yet, amendments to the Code of Criminal Procedure and to the Law on Prosecution (including the merger of the functions of Minister of Justice and Prosecutor General with increased powers without sufficient safeguards to avoid abuse of powers) may jeopardise the protection of the right to a fair trial in criminal proceedings, the presumption of innocence and the right to defence. Furthermore, provisions on the use of illegally obtained evidence are not in full conformity with applicable standards. Media freedom also raised several concerns. While political influence on public service media was a long-standing problem, sweeping legal changes introduced through transitional arrangements at the beginning of 2016 breached Council of Europe standards by placing public service media under direct government control. Addressing a broader reform of public service media which is currently underway, the Commissioner urged the Polish authorities to introduce safeguards to guarantee the independence of public service media from political influence, in consultation with the Council of Europe. While welcoming that a draft law decriminalising public insult of the President or of a constitutional body was under discussion, the Commissioner encouraged the Polish authorities to consider repealing all criminal provisions against defamation and to deal with it through strictly proportionate civil sanctions only.

Finally, regarding gender equality, the Commissioner notes that many measures have been taken to combat domestic violence and that the Council of Europe Convention on preventing and combating violence against women and domestic violence was ratified by Poland. However, the persistence of gender-bias among medical staff, police, prosecutors and judges who deal with women victims of domestic violence and gender-based violence are highlighted as problematic. Other concerns include public-run shelters not adapted to the specific needs of women victims of domestic violence, a lack of sustainable public funding for NGO-run shelters for women victims of domestic violence, the continuing gender gap in employment and the prevalence of other forms of discrimination affecting women and the many obstacles to women's access to safe and legal abortion and contraception.

The Polish authorities submitted [comments](#) on the Commissioner's report.

In January 2016, the Commissioner published a [statement](#) in which he called on the President of the Republic of Poland not to sign the law on Public Service Media governance, as it worryingly puts public service media under direct government control.

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.

ECRI’s conclusions regarding the implementation of the recommendations to Poland made in the fourth monitoring cycle report (published on 15 June 2010) were adopted on 20 March 2013.

In its report on Poland (fourth monitoring cycle) ECRI recommended that the Government present comprehensive legislation against discrimination as soon as possible. The authorities of Poland have informed ECRI that the Act on the Implementation of certain provisions of the European Union on Equal Treatments (Anti-Discrimination Act) was enacted and entered into force on 1 January 2011. ECRI notes with regret that the Act does not prohibit discrimination on grounds of language and citizenship. It also notes that in some areas of life the Act prohibits discrimination on four grounds, sex, race, ethnic origin or nationality, while in others it does so on three grounds, race, ethnic origin and nationality – effectively excluding religion. In general, ECRI welcomes the adoption of ADA but considers that the act needs to be improved. Inter alia, the act should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions (cf. GPR No. 7). ECRI, therefore, concludes that its recommendation has been partially implemented.

ECRI considers the recommendation that the authorities ensure that an independent body is entrusted with all the powers that the specialized body for combatting racism and racial discrimination should have, partially implemented. Article 18 of the Anti-Discrimination Act entrusts the Human Rights Defender and the Government Plenipotentiary for Equal Treatment with the task of “implementing the principle of equal treatment”, however, the Government Plenipotentiary for Equal Treatment is not an independent body. ECRI has also been informed that the Human Rights Defender processes complaints, conducts investigations, institutes and participates in court proceedings, undertakes studies, provides other public bodies with advice, proposes legislative initiatives, conducts campaigns and cooperates with NGOs. However, the Human Rights Defender is not competent for disputes between private entities, even in cases of racial discrimination. Furthermore, the Human Rights Defender is lacking sufficient human and financial resources.

ECRI recommended that the authorities encourage the Polish Football Association to develop, together with the football clubs, a code of conduct that would address, inter alia, the issue of fans’ racism. Moreover, the authorities should step up their efforts to raise awareness about the dangers of racism in sport. ECRI welcomes the developments and the efforts of the authorities, including a promotional campaign in cooperation with the Human Rights Defender and several preventive measures such as workshops, conferences, the distribution of a “How to Fight Racism” guidebook

and the implementation of the UEFA EURO 2012 Social Responsibility Programme. However ECRI expresses concern about the ongoing racist incidents at Polish sports events and reminds that the code of conduct has not been developed. Therefore, ECRI concludes that the recommendation has been partially implemented.

ECRI's [*fifth monitoring cycle report*](#) on Poland was adopted on 20 March 2015 and published on 9 June 2015. It is noted that since the last report on Poland, progress has been made in a number of areas.

An "*Act on the implementation of certain provisions of the European Union on equal treatment*" was adopted which intrusts the Human Rights Defender with responsibility for protecting the principle of equal treatment. In 2012, the Defender obtained confirmation of the 1999 accreditation, meaning that it complies fully with the Paris Principles.

The Prosecutor General issued various guidelines for prosecutors namely on the treatment of hate speech (including online hate speech) and hate crimes. Prosecutor's offices were designated in each region and, in each of these offices, two prosecutors were appointed to conduct proceedings relating to cases of hate crime and improve practices in preliminary investigations. Measures were taken against two prosecutors who had failed in their duties regarding the fight against racist crime.

Poland started the process of formulating a new integration policy which will apply to all foreigners and will aim to make them socially and economically self-sufficient. The implementation of the governmental programme for the Roma community has brought about an increase in the number of young Roma who complete secondary education. In addition, a National Action Plan for Equal Treatment 2013-2016 has been adopted and numerous awareness-raising and training activities in connection with racist crimes, intolerance and discrimination have been carried out by the authorities.

Though ECRI welcomes these positive developments in Poland, some points continue to give rise to concern, such as homophobic statements in political discourse, hate speech on the Internet against the Muslim community, and the existence of nationalist groups whose numbers are constantly increasing. In particular, racism at sports events remains a real problem because few cases of racist crime result in convictions or are the subject of administrative measures.

Lastly, the Criminal Code does not explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. Homo/transphobic violence is present in schools, while homosexuality is still seen by a large section of the population as a disease and transgender persons are subject to certain instances of discrimination in access to healthcare.

In its fifth report, ECRI asks the Polish authorities to take further measures in a number of areas. It makes a series of recommendations, including:

- Alignment of the provisions of the Criminal Code to combat racism and racial discrimination;
- Inclusion of language, citizenship, gender identity and sexual orientation as prohibited grounds in all relevant provisions;
- Insurance that an independent body can deal with cases of racial discrimination between private individuals;
- Study of extremist violence, including in sport, leading to the elaboration of an action plan for preventing and combating it;
- Quick adoption of the new integration strategy for foreigners and, in particular, alternation of the arrangements for refugees;
- Legislative changes to guarantee comprehensive protection on grounds of sexual orientation and gender identity, ensuring that the necessary administrative documents can be issued to persons wishing to enter into a same-sex marriage or partnership in another country, and facilitate changes of gender and name.
- Inclusion in the curricula of all branches of education a programme for raising awareness about, and combating, discrimination towards LGBT persons.

For more information: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Poland/Poland_CBC_en.asp

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.

With regard to the 3rd reporting cycle in respect of Poland, the national authorities submitted their [State Report](#) in December 2012. The Advisory Committee on the Framework Convention for the protection of national minorities adopted its [opinion](#) on 28 November 2013. The Polish Government submitted [comments](#) on this third opinion on 21 May 2014.

The Committee of Ministers adopted its [Resolution](#) on 4 March 2015.



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It highlights some positive developments, such as the adoption of the Act on National and Ethnic Minorities and of the Regional Language and the Anti-Discrimination Act. These two constitute a solid legal basis for the protection of rights of persons belonging to national minorities.

The authorities provide various forms of assistance to cultural activities of national minorities, and raise awareness of national minorities' contribution to Polish society in general.

A well-developed system of minority language education exists in Poland, permitting children belonging to national minorities to receive instruction of or in their languages. The right to display bilingual signs and place-names and to use a minority language in relations with administrative authorities is respected in practice in the municipalities where persons belonging to national minorities constitute at least 20% of the population.

In recent years, the authorities have pursued their efforts to combat discrimination and implement policies for Roma inclusion into the mainstream society. The National Programme for the Roma Community Integration in Poland which was established in 2004 has been extended at the end of 2014 for the years 2014-2020.

However, the resolution also requires immediate action on several issues. It namely calls on the Polish authorities to:

- increase efforts to combat all forms of intolerance, racism, xenophobia and hate speech;
- take further legislative measures and implement policies to combat racist manifestations, including in the media and the political arena;
- ensure that Roma children are fully integrated into mainstream education, review the enrolment policies for special schools, ensure access to pre-school facilities for all Roma children and guarantee that the curriculum in such kindergartens corresponds to the diverse needs and multilingual composition of the groups concerned;
- ensure, in consultation with the representatives of national minorities, adequate provision of textbooks in minority languages;
- monitor the effects of the recent changes to the system of allocation of subsidies to national minority schools.

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. The subsequent reports are presented at three-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 2nd periodical report was submitted by Poland on 16 February 2015, with a delay of nearly two years. The Committee of Experts' evaluation report on the implementation of the Charter in Poland was adopted on 19 June 2015. The Committee of Ministers adopted its corresponding recommendation on 1 December 2015.

The Committee of Ministers recommends the following measures to be taken as a matter of priority;

- strengthening efforts to promote awareness and tolerance in Polish society vis-à-vis regional or minority languages and the cultures they represent;
- making available education in Belarusian, German, Kashub, Lemko and Ukrainian as a medium of instruction at pre-school, primary and secondary levels;
- providing updated textbooks and other teaching materials for regional or minority language education and further training of a sufficient number of teachers who are able to teach subjects in the languages mentioned above;
- taking measures to strengthen the offer of broadcasting in all regional or minority languages;
- reconsidering the application of the 20% threshold with regard to the undertakings in Article 10 and create the legal possibility of submitting oral or written application in the regional or minority languages also in relation to districts and voivodships;
- establishing a structured policy and taking flexible measures facilitating the application of the Charter to the Armenian, Czech, Karaim, Romani, Russian, Slovak, Tatar and Yiddish languages.

The 3rd periodical report was due on 1 June 2016.

Action against trafficking in human beings (GRETA)

The 'Group of Experts on Action against Trafficking in Human Beings' ([GRETA](#)) carries out visits and publishes country reports evaluating legislative and other measures taken by Parties to give effect to the provisions of the Convention on Action against Trafficking in Human Beings (CETS No. 197). GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is based.

Within the [1st evaluation round concerning Poland](#), GRETA's Report including the Polish Government's Comments were published on 6 May 2013.



Report.doc

The [Recommendation of the Committee of the Parties](#) was adopted on 7 June 2013, and [Government's Reply](#) to the Committee of the Parties' Recommendation was received on 26 May 2015.



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In its first evaluation report, GRETA welcomed the adoption of legislation criminalising trafficking in human beings and providing for the rights of victims of trafficking, as well as the adoption of a comprehensive national action plan against trafficking in human beings and the involvement of non-governmental organisations in its planning and implementation. It also welcomed the setting up of anti-trafficking co-ordination structure. The involvement of NGOs in co-ordination structures, as well as in the planning and implementation of the national action plan, was considered a positive feature of the Polish anti-trafficking framework. Furthermore, GRETA recognised efforts made to raise general awareness of human trafficking through information campaigns, school education and training of relevant professionals.

However, GRETA considered that the Polish authorities should take further steps to identify persons and groups vulnerable to human trafficking and to focus on prevention among them through targeted social, economic and other initiatives. GRETA called on Poland to strengthen action to combat human trafficking for the purpose of labour exploitation. It also urged the Polish authorities to pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking and adopt nation-wide procedures for the identification of child victims of trafficking. GRETA called on the authorities to ensure the victims of trafficking can take full advantage of the right to be granted a residence permit. According to GRETA, further measures to facilitate access to compensation for victims of trafficking. The Polish authorities should also strengthen the effectiveness of investigations and prosecutions with a view to securing proportionate and dissuasive sanctions.

GRETA's Second Evaluation Round for Poland was launched in September 2015. The reply from Poland to GRETA's 2nd Questionnaire was published on 9 March 2016. GRETA's 2nd evaluation visit to Poland will take place in the autumn.



Reply Poland 2nd
evaluation round.doc

Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure 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.

Poland ratified the Istanbul Convention on 27 April 2015 with a number of [reservations and declarations](#) which other state parties have formally objected to. As a state party to the Convention, it is subject to the evaluation procedure which will be initiated in relation to Poland in late 2019.

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" 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.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO's last [Evaluation report](#) regarding Poland was published in January 2013. The subsequent [Compliance report](#) was issued in February 2015.

In the evaluation report, GRECO addresses 16 recommendations to Poland. In its compliance report, assessing the measures taken by the authorities, GRECO notes that six of these recommendation have not been implemented, such as making more transparent interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process or the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians with regard to concrete legislative (draft) provisions.

Three recommendations have been dealt with in a satisfactory manner, such as widening the scope of asset declarations by judges to include information on assets of spouses, dependent family members and, as appropriate, other close relatives and the same principle applying to prosecutors and parliamentarians.

Finally, seven recommendations were partly implemented, regarding for example the dissemination among all prosecutors of the "Collection of Ethical Principles governing the Prosecutors' Profession" and complementation of these in such a way so as to offer proper guidance specifically with regard to conflicts of interest and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities).

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2015, there were 346 (503 at 31.12.2014) cases against Poland pending before the Committee of Ministers for supervision of their execution. 35 of these cases were "leading cases" (40 at 31.12.2014), i.e. raising a new structural /general problem and requiring the adoption of general measures, the other cases being "repetitive cases" (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2015, the CM was seized by 131 new cases (96 in 2014) against Poland of which 9 leading cases (1 in 2014) and the sums awarded in 2015 as just satisfaction amounted to € 885.458 (€ 456.269 at 31.12.2014).

In 2015, 288 cases (356 in 2014) were closed by the adoption of a Final Resolution, of which 14 leading (23 in 2014).

Since 2013 a progress in the implementation of judgments against Poland can be noted, resulting in a substantial decrease in the number of pending cases (from 908 cases pending in 2012 to 346 cases in 2015). For a description of main achievements in the recent years, covering issues like detention, access to a court, access to communist secret services' files, see also the [9th Annual Report of the Committee of Ministers](#).

Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under enhanced procedure

Main cases pending execution before the Committee of Ministers under the enhanced procedure cover issues like excessive length of criminal, civil and administrative proceedings (groups of cases *Bqk, Majewski, Fuchs*)¹; inhuman and degrading treatment of applicants in detention due to lack of adequate medical care (*Kaprykowski* group of cases)²; failure to provide effective access to reliable information on the conditions for having a lawful abortion (*P. and S.*); deprivation of liberty of a juvenile in the correctional proceedings without a specific court's order (*Grabowski*) and the CIA secret rendition operations (*Al Nashiri, Husayn (Abu Zubaydah)*)³.

Bqk, Majewski, Fuchs groups of cases

Application Nos. 7870/04, 52690/99, 33870/96, judgments final on 16/4/2007, 11/1/2006 and on 11/5/2003, enhanced supervision

Excessively lengthy proceedings: excessive length of criminal (*Bqk* group), civil (*Majewski* group) and administrative (*Fuchs* group) proceedings and lack of an effective remedy (Articles 6§1 and 13).

Status of execution - *Bqk* and *Majewski* groups of cases:

At its meeting of December 2015 the Committee of Ministers, having assessed the measures taken by the authorities in response to the findings of the Court notably in the *Rutkowski* pilot judgment and in the *Kudła* group of cases, proposed to close certain cases in these groups and to continue examination of further measures required in view of reducing the length of proceedings and securing the functioning of the remedy put in place in the context of the groups of *Bqk* and *Majewski*.

Last Committee of Ministers decision (December 2015)

The Deputies

1. considered that the situation concerning the length of proceedings appears mixed, with the emergence of some positive trends but no impact on the backlog of cases; noted however that the impact

¹ Last decision of the Committee of Ministers: [CM/Del/Dec\(2015\)1243/H46-15](#), [CM/Del/OJ/DH\(2013\)1179/12](#)

² Last decision of the Committee of Ministers: [CM/Del/Dec\(2013\)1164/18](#)

³ Last decision of the Committee of Ministers: [CM/Del/Dec\(2016\)1259/H46-21](#)

of measures recently adopted is yet to be seen and that the authorities' strategy to follow up those measures appears convincing;

2. invited therefore the authorities to provide the Committee with information on the impact of the measures recently adopted and the follow-up given, along with complete statistics allowing a full assessment of the situation;

3. recalled that in *Rutkowski*, the European Court confirmed that the 2004 Act (as reformed in 2009) had all the features of an effective remedy in law, criticising only its functioning in practice, and decided to adopt Final Resolution CM/ResDH(2015)248-app in Appendix in 205 cases in this group which concerned the absence of any remedy;

4. noted with satisfaction that the authorities intend to improve the practice of domestic courts through the publication and dissemination of the European Court's judgments and systematic judicial training and invited them to keep the Committee informed of subsequent developments in the application in practice of the remedy;

5. noted with interest the authorities' decision to further amend the 2004 Act and strongly encouraged them to bring forward their proposed amendments.

Status of execution –Fuchs group of cases:

With respect to issues raised in the *Fuchs* group of cases bilateral consultations took place in Warsaw in December 2014 and October 2015. A revised action plan/ report in addition to the action plan transmitted in April 2015 is awaited (Last Committee of Ministers' decision: [CM/Del/OJ/DH\(2013\)1179/12](#)).

[Kędzior group of cases](#)

Application No. 45025/07, judgment final on 16/01/2013, enhanced supervision

Judicial review of the placement / maintaining in a social care home of persons with mental disorders: Lack of judicial review of the placement and maintaining in a social care home; impossibility to independently challenge the continued institutionalisation, given the deprivation of legal capacity (*Article 5§§1 and 4, Article 6§1*)

Status of execution:

[Last Committee of Ministers decision \(March 2016\)](#)

The Deputies

1. in respect of the individual measures, noted that both applicants remain placed in social care homes and that, whilst they can access the domestic courts in order to obtain a review of their situation and have done so, this procedural safeguard is not reliable for the applicant in *Kędzior*, as it is not guaranteed in law but depends on the practice of the domestic courts;

2. considered that both the creation of a robust procedural safeguard for the applicant in *Kędzior* and the obligation for the authorities regularly to verify the need for the applicants' continued detention are linked to the general measures to be adopted; urged the authorities to ensure in the meantime that the need for the applicants to remain in social care homes is regularly reviewed;

3. in respect of the general measures, noted that the failure of the guardianship court to review the request for placement of the applicant in *Kędzior* in a social care home was an isolated incident and that the authorities have undertaken awareness-raising measures to remedy it; also invited them to clarify that in such proceedings guardianship courts consider whether the mental health of the person concerned warrants compulsory confinement;

4. noted with interest the information on the envisaged amendments to the Psychiatric Protection Act, which would introduce important safeguards, and encouraged the authorities to ensure those amendments will also give the incapacitated person a right to appeal against a decision on his/her compulsory placement in a social care home;

5. expressed concern, however, that these amendments do not appear to introduce a mechanism obliging the authorities to conduct periodic automatic reviews to assess whether a person admitted to a social care home needs to remain there and invited them to confirm that these legislative amendments will introduce such a mechanism and, if not, to indicate the measures planned in this respect;

6. strongly encouraged the authorities to ensure that the necessary measures are adopted without further delay and invited the authorities to provide by 1 July 2016 the outstanding information in an updated action plan/report including a time-table for the legislative amendments and any other measures to be adopted.

P. and S. case

Application No. 57375/08, judgment final on 30/01/2013, enhanced supervision

Various violations in the context of lawful abortion procedures: authorities' failure in 2008 to provide effective access to reliable information on the conditions and procedures to be followed in order to access lawful abortion; unwarranted disclosure of the applicants' personal data to the public by the hospital eventually carrying out the lawful abortion; unjustified 10-day detention in a juvenile shelter to convince the applicant not to abort (*Articles 3, 5 and 8*)

Status of execution: Action report submitted on 29/11/2013

Individual measures: the just satisfaction awarded to both applicants (daughter and her mother) was paid. There is no possibility for re-opening of the proceedings within which an order to place the minor in a juvenile shelter was issued. However, the first applicant may file a claim against the State Treasury for violation of her personal rights on account of the unlawful deprivation of liberty.

General measures:

Violations of Articles 3 and 8 of the Convention: According to the authorities a legal framework in place is sufficient for the protection of confidential information concerning patients. Breach of medical confidentiality may result in a physician's professional, civil and criminal responsibility.

The Ministry of Health organized a meeting with the National Consultant and Regional Consultants in the field of Obstetrics and Gynecology as well as with the National Consultant in the field of Perinatology, concerning, *inter alia*, proper application of standards on the access to legal abortion, prenatal examination and a proper use of the conscientious clause. All the consultants were obliged to transmit information on such standards to directors of hospitals and physicians.

Violation of Article 5: the authorities have undertaken awareness-raising measures, namely translation and publication of the judgment, as well as its inclusion in the curricula of trainings for judges and prosecutors.

The communications submitted in August 2014 by the Center for Reproductive Rights and Amnesty International, indicate that the authorities' Action report does not fully respond to the violations found. To this end, the authorities must notably introduce legally binding measures ensuring uniform implementation of the abortion law, amend the existing regulation on the conscientious objection to ensure that health care providers' refusal on such ground does not hinder women's access to lawful reproductive health services. Moreover, according to the communications, Poland must monitor the protection of patients' confidential medical data and protect minors' reproductive autonomy.

Responding to both submissions in October 2014, the authorities made reference to the information already provided in the above action report, and in the action reports in *Tysiack v. Poland*, and *R.R. v. Poland*.

Following a series with the authorities of bilateral contacts an updated action plan/report is awaited.

Grabowski case

Application No. 57722/12, judgment final on 30/09/2015, enhanced supervision

Unlawful deprivation of liberty of a juvenile in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (*Article 5 §§1 and 4*)

Status of execution:

Action plan submitted on 24/06/2016.

Individual measures: The applicant was released on 9/01/2013.

General measures: According to the Action plan, new Common Courts` Rules, came into force on 01/01/2016. Under these rules, judges are obliged to refer the case of a juvenile for a hearing, to resolve issues indicated in article 27 of the Act on the Procedure in Juvenile Cases. Article 27 concerns questions relating to detention. In addition, such a decision must reach the administration of a shelter no later than 3 working days before expiration of a period of detention.

Moreover, the authorities indicate, following awareness raising measures (translation, publication and dissemination of the judgment) article 27 of the Act of the Procedure in Juvenile Cases, is being interpreted in the practice of domestic courts as requiring a separate judicial decision each time the detention of a juvenile is extended.

The authorities are monitoring the current practice and will consider legislative changes to the Act of the Procedure in Juvenile Cases if awareness raising measures do not prove sufficient to entrench this practice.

Al Nashiri, Husayn (Abu Zubaydah) group of cases

Applications Nos. 28761/11 and 7511/13, judgments final on 16/02/2015, enhanced supervision

Secret "rendition" operation to CIA agents: complicity of Polish authorities in the CIA High-Value Detainees Programme, that enabled the US authorities, in 2002, to secretly detain, torture and ill-treat the applicants in a CIA detention facility in Stare Kiejkuty in Poland, and to transfer them from its territory in 2003 despite the existence of a real risk that they would be subjected to treatment contrary to Article 3, or could face a flagrant denial of justice, or that the applicant (Al Nashiri) would be exposed to death penalty (*Article 2, Article 3 - procedural and substantial limbs, Articles 38, 5 and 8, Article 13 in conjunction with Articles 5 and 8, Article 6§1 and Article 1 of Protocol No. 6*)

Status of execution:

Last decision (7-8 June 2016)

The Deputies

Individual measures

1. recalled that, at the Committee's last examination of the cases, following the United States' deeply concerning decision not to support the requests for diplomatic assurances, the Committee welcomed the Polish authorities' readiness to renew their request and urged them to raise the issue at high political levels;

2. noted with satisfaction the information from the Polish authorities that a new request for diplomatic assurances is being prepared by the Chancellery of the President of Poland to be sent to its United States counterpart and urged them to submit this request without delay;
3. recalled that the United States has observer status with the Council of Europe and as such shares its ideals and values; considered that these ideals and values encourage co-operation and urged the United States authorities to reconsider their response to the Polish authorities in the context of any future request for assurances;
4. as regards the domestic investigation, remained concerned that concrete results have still not been achieved; therefore urged the Polish authorities to ensure that it is completed without further delay;

General measures

5. concerning the violation of Article 38 of the Convention, noted with satisfaction that the Polish authorities have started reflecting on the possibility of putting in place a procedure for unhindered communication and exchange of documents with the European Court, and encouraged them to complete their reflections as soon as possible;
6. in the absence of information convincingly addressing the root causes of the other violations, called on the authorities to reflect not only on the oversight of the daily operational work of the intelligence services, but also to scrutinise high-level decision making in this area;
7. decided to resume consideration of the urgent individual measures in these cases at their 1265th meeting (September 2016) (DH) and invited the authorities to provide updated information concerning the individual and general measures in good time for their 1273rd meeting (December 2016) (DH).

Social and economic rights: European Social Charter and European Committee of Social Rights

The honouring of commitments entered into by the States Parties to the [European Social Charter](#) is subject to the monitoring of the [European Committee of Social Rights](#) (ECSR). This body monitors compliance under the two existing monitoring mechanisms: through collective complaints, lodged by the social partners and other non-governmental organisations ([collective complaints procedure](#)); through national reports drawn up by States Parties ([reporting system](#)).

The aim pursued with the introduction, in 1995, of the **collective complaints procedure** was to increase the effectiveness, speed and impact of the implementation of the Charter. In this view, this procedure has strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the ECSR for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the procedure. The *decisions* adopted by ECSR in the framework of this monitoring mechanism can be consulted using [the European Social Charter Database - HUDOC Charter](#).

In the framework of the **reporting system**, 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. Following a decision taken by the Committee of Ministers in April 2014, States having accepted the collective

complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups. The decisions adopted by ECSR in the framework of the reporting system, called *conclusions*, are published every year. They can be consulted using the [European Social Charter Database - HUDOC Charter](#).

Poland ratified the 1961 European Social Charter (ETS N° 035) on 25/06/1997, accepting 58 of its 72 provisions. On 27/01/2011, it denounced the provision of Article 8 paragraph 4. It ratified the Amending Protocol to the 1961 Charter (ETS N° 142) on 25/06/1997. It has signed, but not yet ratified the Revised European Social Charter (ETS N° 163) on 25/10/2005. It has neither signed neither the 1988 Additional Protocol to the 1961 Charter (ETS N° 128), nor the Additional Protocol providing for a system of collective complaints (ETS N° 158).

In the **2013 Conclusions concerning Thematic Group 2 “Health, social security and social protection)**, over the reference period 2008-2011, ECSR referred to 6 situations of non-conformity with the right to protection of health (Article 11§1), the right to social security (Article 12§1, 12§3 and 12§4), the right to social and medical assistance (Article 13§3), and the right to benefit to social welfare systems (Article 14§1).

In the **2014 Conclusions concerning Thematic Group 3 “Labour rights”**, over the period 2009-2012, ECSR referred to 5 situations of non-conformity with the right to just condition of work (Article 2§1), the right to a fair remuneration (Article 4§2, 4§4 and 4§5), and the right to organise (Articles 5).

In the **2015 conclusions regarding thematic group 4 “Children, families, migrants”** over the reference period 2010-2013, ECSR referred to 5 conclusions of non-conformity with the right of employed women to protection of maternity (Article 8§4.a), the the right of the family to social, legal and economic protection (Article 16), the right of children and young persons to social, legal and economic protection (Article 17), the right of migrant workers and their families to protection and assistance (Article 19§2 and 19§10). In respect of the other 2 situations related to Articles 19§3 and 19§8, the Committee asked further information in order to examine the situation. The Committee considered that the absence of the information requested amounts to a breach of the reporting obligation entered into by Poland under the 1961 Charter. The Committee requested the Polish Government to remedy this situation by providing the information in the next report.

On 1st February 2016, in the framework of the reporting system, Poland submitted the **[15th national report on the accepted provisions relating to Thematic Group 1 “Employment, training and equal opportunities”](#)** (Articles 1, 9, 10, 15, 18), ECSR Conclusions with respect to these provisions will be published in January 2017.

[Poland and the European Social Charter](#) (country factsheet, document in progress)

[Further information on the treaty system of the European Social Charter](#) Conclusions with respect to these provisions will be published in January 2017.

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.

Two recent opinions were issued by the Venice Commission regarding Poland:

[Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland](#) - adopted in March 2016

This Opinion was requested by the Minister for Foreign Affairs of Poland. The amendments in question do not directly relate to the composition of the Constitutional Tribunal, but they have an intrinsic link to the composition of the Tribunal, which remains incomplete due to contested overlapping appointments of judges.

The Commission recalls the essential character of checks and balances, and states that as long as the situation of constitutional crisis related to the Constitutional Tribunal remains unsettled and as long as the Constitutional Tribunal cannot carry out its work in an efficient manner, not only is the rule of law in danger, but so is democracy and human rights.

The Commission concludes that the amendments would have endangered not only the rule of law, but also the functioning of the democratic system. They cannot be justified as a remedial action against an absence of "pluralism" in the composition of the Tribunal. Rather than speeding up the work of the Tribunal these amendments, notably when taken together, could lead to a serious slow-down of the activity of the Tribunal and could make it ineffective as a guardian of the Constitution. The opinion urges the Government to publish the Tribunal's judgment, which had found the amendments unconstitutional.

[Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts](#) - adopted in June 2016

This Opinion was requested by the Chair of the Parliamentary Assembly's Monitoring Committee. It concerned surveillance powers of the Polish law-enforcement agencies, in particular related to metadata collection. The Commission notes that although States face real threats from terrorism and organized crime, the procedural safeguards and material conditions set in the Police Act for implementing secret surveillance are still insufficient to prevent its excessive use and unjustified interference with the privacy of individuals.

The Venice Commission recommends several amendments be adopted in order to improve the Act, for example to strengthen the proportionality principle, to exclude surveillance of communication protected by lawyer-client privilege, to limit the duration of the metadata monitoring, to introduce an independent body for ex-post verification of lawfulness and relevance of the metadata collection operations, to strengthen judicial authorisation of the "classical surveillance" with additional

procedural guarantees and tools, and to require the police to keep proper records which should enable effective ex-post control of the monitoring operations etc.

For more information: <http://www.venice.coe.int/webforms/documents/?country=23&year=all>