



HELSINKI FOUNDATION
FOR HUMAN RIGHTS



**HUMAN
RIGHTS
HOUSE**
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Joint submission:

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Helsinki Foundation for Human Rights

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Annex 1

Human Rights House Foundation (HRHF) establishes, supports, and connects Human Rights Houses – coalitions of civil society organisations working together to advance human rights at home and abroad. Today, 16 Houses in 11 countries are united in an international network of Human Rights Houses. HRHF and the Human Rights Houses together advocate for the freedoms of assembly, association, and expression and the right to be a human rights defender. These four rights underpin a strong and independent civil society and protect and empower human rights defenders. HRHF was established in 1992.

Address: Rue de Varembé 1, 5th floor, PO Box 35, 1211 Geneva 20, Switzerland

Contact person: Matthew Jones, International advocacy officer, email: matthew.jones@humanrightshouse.org

Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, HFHR has a consultative status with the United Nations Economic and Social Council (ECOSOC). HFHR's objective is the protection and promotion of human rights.

Address: Wiejska 16, 00-490 Warsaw, Poland

Contact person: Malgorzata Szuleka, Secretary of the board, email: Malgorzata.szuleka@hfhrpl

1. Rule of law crisis

1.1. **Constitutional Tribunal.** The rule of law crisis in Poland was initiated by the unlawful election of three judges of the Constitutional Tribunal in autumn 2015. In November 2015, the Parliament chose five judges of the Constitutional Tribunal, although legally it could only elect two (that was further confirmed in the judgement of the Constitutional Tribunal). The remaining three persons were elected to posts which were already occupied by legally elected judges from whom the President did not take oath. In May 2021, the European Court of Human Rights (ECtHR) confirmed that these persons had been unlawfully elected (*case of Xero Flor w Polsce sp. z o.o. v. Poland*)¹. The judgement, however, has not been implemented by the Polish government. There are also other irregularities in the functioning of the Constitutional Tribunal. The President of the Constitutional Tribunal is accused of arbitrarily appointing adjudicating panels, and the Tribunal itself has become a tool in the hands of the authorities, used by the government to legitimize controversial reforms and undermine the decisions of international bodies.

Recommendation

- Immediate removal of three unlawfully elected persons from adjudication in the Constitutional Tribunal.

1.2. **National Council of the Judiciary (NCJ).** NCJ is a constitutional body whose task is to guard the independence of courts and judges. The most important competence of the NCJ is to nominate candidates for appointment to judicial positions. The Constitution provides that the NCJ is composed of 25 members, including 15 persons elected from among judges. Until 2018, these judges were elected by the judges themselves. The law passed in December 2017 changed this rule – since then judges-members of the National Council of the Judiciary are elected by the Parliament. At the same time, the term of office of the incumbent members has been terminated. The new NCJ is widely viewed as an illegal and politicized body and the irregularities in its composition affect also actions taken by the Council. It is argued, among others, that judges appointed at the request of unlawfully constituted body are not legally appointed judges. The Court of Justice of the European Union (CJEU)² decided that the composition of the NCJ and the circumstances relating to the appointment of new members of this body are important factors that should be taken into account when assessing the independence of judges appointed at the request of this body. Subsequently, the Supreme Court³ held that the judgments of the Supreme Court, issued in a panel with the participation of a judge appointed at the request of the new NCJ, were tainted with legal defects allowing, among others, resumption

1 ECtHR, *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18

2 CJEU judgement of 19 November 2019 no. C-585/18

3 Supreme Court resolution of 23 January 2020

of the proceedings. On the other hand, in the case of common courts, such a defect occurs if the incorrect appointment leads to a violation of the standards of the law to an independent court. In 2021 and 2022, the irregularities in the composition of the Polish Supreme Court were confirmed by the ECtHR, which ruled in three judgments⁴ that in cases concluded with a judgment by the Supreme Court issued with the participation of an incorrectly appointed judge, there was a violation of Art. 6 of the ECHR.

Recommendations

- Restoration of the legality in the personal composition of the NCJ via introduction of the rule that 15 judges-members of the NCJ are elected by the judiciary;
- Introduction of the process of verification of judicial appointments made by the President upon the motion of the “new” NCJ to ensure that all judges adjudicating in Polish courts were appointed in compliance with the law.

1.3. **The Supreme Court.** The new Act on the Supreme Court adopted in 2017, established two new chambers of the Supreme Court, the Disciplinary Chamber and the Extraordinary Control and Public Affairs Chamber, which were entirely filled with judges appointed at the request of the “new” NCJ (see above). Third, the Disciplinary Chamber has been granted significant organizational autonomy, constituting a *de facto* special court used by the authorities to put pressure on independent judges. Fourth, in 2020, the new First President of the Supreme Court was elected arguably with violation of law.

Recommendation:

- Liquidation of the Disciplinary Chamber and ensuring that disciplinary cases are considered by fully independent and lawfully established court.

1.4. **Disciplinary liability of judges.** The changes in the field of disciplinary liability of judges concern the aforementioned establishment of the Disciplinary Chamber – a body whose functioning violates the Constitution, EU law and the ECHR – and the introduction of provisions that allow for the imposition of disciplinary sanctions on judges who, relying on the judgments of the Supreme Court and international courts, verify the legality of appointment of other judges. In a judgment issued in July 2021, the CJEU ruled that the system of disciplinary liability of Polish judges infringes EU law, inter alia, because it allows judges to be punished for a mere interpretation of the law⁵. Despite this, disciplinary rules are still used to exert pressure on independent judges through, among others, suspending them from

4 ECtHR, *Reczkowicz v. Poland* case no. 43447/19, *Dolińska-Ficek and Ozimek v. Poland* 49868/19 57511/19, *Advance Pharma sp. z o.o. v. Poland* case no. 1469/20

5 CJEU judgement of 15 July 2021 C-791/19

official duties (which also results in lowering their salary) or lifting their immunity. Furthermore, as of 2018 the disciplinary commissioner for common courts judges started disciplinary proceedings against judges. In many cases, the proceedings concern either the content of judicial decision or judges' public statements in defence of the rule of law and judiciary independence.

Recommendation:

- Abolition of provisions allowing for the imposition of disciplinary penalties on judges for their interpretation of law, in particular for examination of the legality of the appointment of another judge.

1.5. Non-implementation of judgments of the CJEU and the ECtHR. In connection with the rule of law crisis in Poland, several important judgments of the CJEU and the ECtHR have been issued in recent years. The former found a breach of the EU law with regard to the lowering of the retirement age of judges and the new rules of disciplinary liability of judges. Moreover, the CJEU, in response to preliminary questions from Polish courts, presented the interpretation of EU standards of judicial independence, which is important for assessing the compliance of solutions adopted in Poland with EU law. The CJEU also issued interim measures obliging the Polish authorities to suspend the operation of the Disciplinary Chamber. The ECtHR found that Poland violated the ECHR by dismissing court presidents without providing them access to court, allowing illegally elected persons to adjudicate in the Constitutional Tribunal and unlawful appointments of the Supreme Court's judges. However, most of these judgments (except the abovementioned CJEU ruling on the retirement age of judges) have not yet been fully implemented, what has even led to the imposition of financial penalties on Poland by the CJEU. A particularly dangerous phenomenon consists in questioning judgments of international courts via proceedings before the Constitutional Tribunal – several applications in this regard were submitted by the Public Prosecutor General. In relation to some of them, the proceedings have already ended with the declaration of unconstitutionality of the EU treaties and the ECHR.

Recommendations:

- Full implementation of the ECtHR and CJEU judgments in cases concerning violations of the judicial independence in Poland.

2. Freedom of speech

2.1. Widening political control over the media. The takeover of the governing structure of the public media was concluded already in 2016, but the subsequent years fully confirmed its damaging effects on the media pluralism. One result is an extremely biased content – as confirmed, among many others, by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) election missions to Poland (for instance, after the presidential election in 2020, the observers simply concluded that the public television “acted as a campaign vehicle for the incumbent” President Andrzej Duda⁶). Secondly, the governing majority changed the public media government structures by establishing the National Media Council (controlled by the governing majority) and changed the rules of appointing public media leadership. Thirdly, the state funding is used to control some of the private media. Government publicity campaigns and ads from state-controlled companies are diverted to the media favourable to the government.⁷ Finally, since 2020, the fourth element of the media capture is the ownership takeover. First, in 2020, the state-owned petrol company bought Polska Press company, one of the biggest publishing groups in Poland. Secondly, there were visible attempts – so far unsuccessful – to gain control over the TVN Group, the largest private television in Poland, through a legislative measure or by not renewing the broadcasting licences of its TV channels.⁸

Recommendations

- Ensure fair and transparent distribution of public funding to the media, including of state advertising, and cease using it as a tool to economically reward or punish media outlets, depending on how they report on the ruling coalition;
- Ensure that any possible media ownership legislation will be drafted and implemented in a non-arbitrary manner and will guarantee media pluralism and respect media independence.

2.2. Legal harassment of journalists and civil society activists. Journalists from independent media are increasingly facing legal harassment. From 2015 to 2021, “Gazeta Wyborcza” (one of the leading daily newspapers) alone was targeted with at least 73 legal actions, while many more legal actions have been initiated against several other outlets.⁹ Many of them were brought by public

6 OSCE ODIHR, Republic of Poland Presidential Election 28 June and 12 July 2020. ODIHR Special Election Assessment Mission – Final Report, 23.09.2020.

7 Tadeusz Kowalski, Advertising expenses' analysis of state-owned companies (SOC) in the years 2015-2019, 2020.

8 See, e.g. Chairman of the National Broadcasting Council, Reply to the Commissioner for Human Rights Letter, 4 March 2022.

9 Report: Attacks on Independent Media in Poland 2015-2021, Gazeta Wyborcza, 15.06.2021.

institutions, state-owned companies and public officials. The number of final convictions for criminal defamation through media has increased from 70 convicted in 2015 to 118 in 2018¹⁰. What is more, legal harassment directed against persons seeking to exercise the freedom of expression is not only limited to journalists but also affects many others who contribute to public debate, such as activists, academics, artists or whistleblowers. A particularly worrying incidents include prosecuting for modifying national or religious symbols, e.g. for adding rainbow colours or women's symbols¹¹.

Recommendations

- Cease any forms of legal harassment of journalists and others who contribute to public debate;
- Adopt legislation to protect from vexatious legal actions (including Strategic Lawsuits Against Public Participation, SLAPPs);
- Review criminal law provisions envisioning aggravated penalties and public prosecution for insulting certain public authorities and provisions sanctioning insulting religious feelings.

2.3. **Safety of journalists.** In recent years, journalists have been also faced with an increased risks for their safety, especially while covering demonstrations. The danger came not only from some demonstrators¹², but some- times also from the police. The reported incidents include, inter alia, a photojournalist being shot with a rubber bullet, several journalist being bitten with truncheons and being sprayed in the face despite them either wearing PRESS signs or otherwise being clearly identifiable as journalists.¹³ When examined by the police or the prosecutor's office, too often such incidents have been trivialised, explained as legitimate use of force and have not even resulted in disciplinary consequences for the perpetrators.¹⁴ Journalists are also exposed to

10 Based on the Ministry of Justice replies to the HFHR freedom of information requests (replies dated 20.03.2019 and 19.12.2019); on 26 January 2022, the Ministry of Justice informed the HFHR that newer data on final convictions are still not available.

11 E.g. White Eagle over the rainbow. Minister wants investigation, TVN24, 11.07.2018; Poland: Arrest Over Virgin Mary's Rainbow Halo, Human Rights Watch, 8.05.2019; Investigation opened after women's symbol put on Polish flag, ABC News, 16.12.2021; Pro-women rights poster does not insult WW2 resistance symbol: Green Party activists' acquittal becomes final, HFHR, 22.02.2018.

12 See, e.g. violent attacks on the OKO.press journalists Agata Kubis and Maciek Piasecki covering pride parade in Lublin (conducted by counter-demonstrators to the parade), condemned by the OSCE The Representative on Freedom of the Media: [Regular Report to the Permanent Council for the period from 5 July 2019 to 21 November 2019](#); *Policja w Lublinie: podczas marszu nikt nie został ranny. Nikt poza dziennikarzami OKO.press*, OKO.press, 29.09.2019.

13 E.g. Polish Photojournalists Beaten by Riot Police, Council of Europe Platform for the Protection of Journalism and Safety of Journalists, 12.11.2020; Unlawful police violence against journalists must stop. We condemn the recurring assaults and demand accountability, Gazeta Wyborcza, 22.01.2021.

14 See e.g. replies from Police authorities cited in the Ombudsman's motion to the Prosecutor's Office from 16.06.2021, or the [reply](#) to the HFHR letter from the Commander of the Warsaw Police from 22.06.2021.

the risk of unlawful surveillance. The Polish legal framework does not provide enough protection from abusing the right to privacy that may result in breaching the privileged communication (including communication between journalists and their sources). There have been several instances where public prosecutor's office requested journalists to reveal their sources, in addition in some cases journalists were fined for refusing to comply with the requests.¹⁵

Recommendations

- Guarantee the safety of journalists, notably in the context of public demonstrations;
- Effectively investigate any attacks on journalists, including cases of excessive force used by the law enforcement officers against journalists;
- Provide effective safeguards against excessive use of secret surveillance of journalists.

2.4. Restrictions on journalistic work on the Poland's border with Belarus. The state of emergency, introduced in relation to the humanitarian crisis on Poland's border with Belarus on 2 September 2021, effectively banned media coverage of the dramatic events in the border area. On 1 December 2021 a new Law amending the Law on State Border Protection entered into force, and it has empowered the Ministry of Interior to impose limitations on human rights in the border area through ordinances (as of March 2022, the restrictions on the entry to the area have been prolonged till 30 June 2022). The current restrictions cover even a larger border area than the former formal three-month state of emergency. While the new legislation allows the commander of the local border guard to grant special permissions to enter the zone for "a fixed time and on specific terms" also to journalists, in practice media representatives are only allowed to participate in strictly monitored 'tours' organised by the border guards, with a fixed route chosen by the authorities and only in the company of the border guards.¹⁶ In addition to the legislative restrictions at the border area, journalists working in the broader region, outside the prohibited zone, have been facing different forms of intimidation from soldiers operating in the area.¹⁷

Recommendations

- Provide real access for journalists to the area at the Poland's border with Belarus, lifting restrictions declared unconstitutional by the Supreme Court;
- Cease intimidation of journalists documenting the situation at the border area and thoroughly investigate all incidents of journalists being harassed by soldiers or law enforcement officials.

¹⁵ See e.g. the case of Katarzyna Włodkowska: Poland: Journalist must not be jailed for refusing to disclose source, International Press Institute, 29.11.2021, or Ewa Żarska: Prosecutor's office demands access to information covered by reporter's privilege. HFHR responds, HFHR, 16.11.2017.

¹⁶ Gazeta Wyborcza „Safari”, czyli dziennikarska wizytacja granicy pod ścisłym nadzorem,

¹⁷ Committee to Protect Journalists, Polish authorities detain, harass journalists covering refugee crossings from Belarus, Helsinki Foundation for Human Rights Dziennikarze brutalnie zatrzymani pod Michałowem składają zażalenia na zatrzymanie i przeszukanie 25.11.2021.

3. Women's rights

3.1. **Access to abortion.** On 22 October 2020, the Constitutional Tribunal declared the provision enabling the termination of pregnancy in cases of severe foetal defects or an incurable ailment threatening the foetus's life unconstitutional, making access to abortion almost impossible in practice. However, women in Poland have been experiencing difficulties in accessing abortion procedures even before the CT's judgment. According to the data collected by the HFHR this is primarily due to a doctor invoking the conscience clause¹⁸. Also, women may face different procedural obstacles in hospitals which have no basis in law and are misleading as to the scope of the medical services provided by those hospitals. Only slightly over 50% of the hospitals surveyed in 2020 by the HFHR have clearly declared their willingness to perform abortion procedures¹⁹. Polish authorities have not introduced any effective procedure that would ensure that women can exercise their right to have an abortion which is allowed by domestic law. The existing procedure for objecting to an opinion or decision of a doctor is excessively formalistic and does not guarantee that a pregnancy can be terminated within the legal time-limit.

Recommendations:

- Ensure effective access to safe and legal abortion;
- Introduce an effective procedure to ensure that women have an opportunity to exercise the right to lawful abortion. Such procedure should guarantee that women will receive reliable and objective information on the grounds for the lawful termination of pregnancy and the condition of the foetus.

3.2. **Preventing domestic violence.** The government remains reluctant to fully implement the Istanbul Convention. In 2020, the Prime Minister decided to direct the motion to the Constitutional Tribunal upon verification the Convention's compliance with the Polish Constitution. The government has not taken any action to implement the provisions of the Convention – e.g. no institution has been established to coordinate government plans to prevent violence and no provisions of the Criminal Code defining rape or economic violence have been adapted to the provisions of the Convention. It was not until 2020 when the Parliament adopted new legislation, which includes, among other things, the possibility for the police to order the perpetrator of domestic violence who threatens life or health to immediately leave the premises occupied by a victim of violence. Apart from the failure to implement

¹⁸ Helsinki Foundation for Human Rights, Dostępność aborcji w Polsce. Raport z badań przeprowadzonych po tzw. wyroku TK.

¹⁹ Federation for Women and Family Planning, Przemoc instytucjonalna w Polsce. O systemowych naruszeniach praw reprodukcyjnych.

the provisions of the Istanbul Convention, no significant efforts were made to develop a support system for victims of domestic violence. The audit carried out by the Supreme Audit Chamber indicated that the operation of Justice Fund (a governmental fund supposed to support the works of organizations providing aid and support to victims of crimes, including victims of domestic violence) was mismanaged. According to the audit the large group of beneficiaries of subsidy contracts coming from the Fund resulted in uneconomic and unreasonable public spending and fueled mechanisms fostering corruption.²⁰

Recommendations:

- Withdrew from the Constitutional Tribunal the motion for verification of the constitutionality of the Istanbul Convention;
- Enhance support for developing the system to support victims of crimes, including victims of domestic violence.

4. LGBTI rights

4.1. **Situation of LGBTI persons.** LGBTI persons are one of the most vulnerable groups in Poland. Results of studies on discrimination and violence against LGBTI persons conducted by the European Union Agency for Fundamental Rights show that the situation of non-heteronormative persons in Poland is more difficult than elsewhere in the EU²¹. Polish legislation does not guarantee LGBTI persons broad protection against unequal treatment. Also, there are no statutory regulations in Poland that would explicitly provide for a gender recognition procedure for a transgender person.

4.2. **Respect for private and family life.** In Poland, there are currently no solutions that would allow for legal recognition of same-sex relationships. Polish law does not allow marriage (or civil union) by homosexual couples. The authorities also refuse to respect the marriages concluded by LGBTI persons outside Poland. The lack of regulation of same-sex relationships under Polish law also has further consequences, in particular for the legal situation of children of those couples. The LGBTI families have difficulties in recognizing the legal relationship between children and parents. For instance, there is no possibility to transcribe a foreign child's birth certificate in which

²⁰ Supreme Audit Chamber, NIK about the Justice Fund

²¹ European Union Agency for Fundamental Rights, EU LGBTI survey II. A long way to go for LGBTI equality, 2020; European Union Agency for Fundamental Rights, EU LGBTI survey II. A long way to go for LGBTI equality. Country data – Poland, 2020.

the parents are persons of the same sex. In December 2019, the Supreme Administrative Court adopted a decision that closed the possibility to transcribing birth certificates of children of LGBTI couples²².

4.3. Lack of protection from hate crimes. LGBTI persons in Poland are not guaranteed any protection from hate crimes or hate speech motivated by prejudice. Polish criminal law defines hate crimes as acts committed solely on the basis of nationality, race, ethnic origin, political affiliation, religion or the lack of religious denomination. The Ministry of Justice does not recognise this problem among “the most urgent and relevant social needs, justice system needs” and for this reason, no work on introducing relevant protection was carried out.²³

4.4. Anti-LGBTI rhetoric. In recent years, high rank state officials and local authorities launched a campaign of hatred against LGBTI people in Poland. Since 2019, some local governments (at the level of municipalities and provinces) adopted resolutions „against LGBT ideology” (declaring that a given local government is „free from LGBT ideology”). However, some of these declarations were quashed by the courts.²⁴ Furthermore, there have been several attempts to limit the exercise of freedom of assembly by LGBTI persons. Despite the fact that the number of Equality Marches held in various Polish cities is growing every year, in 2018 and 2019 mayors of 5 cities banned these marches. The anti-LGBTI campaign culminated in 2020 during the presidential campaign when the incumbent President Andrzej Duda pledged to fight “LGBT ideology”.²⁵ In addition, prosecutors’ offices have been involved in many court proceedings, advocating against LGBTI persons and defending “traditional values” and the “legal order of the Republic of Poland”. The prosecutors’ activity in these cases results from the decisions of the management of the National Public Prosecutor’s Office, which is headed by the Prosecutor General, who is also the Minister of Justice and an active politician.

Recommendations:

- Respect the right to privacy and family life of same sex couples and introduce legal recognition of their relationships and safeguard legal protection for children of same-sex couples;
- Amend the Criminal Code and introduce effective legal protection against hate crimes and hate speech based on sexual orientation and gender identity;
- Introduce swift, transparent and accessible gender recognition procedure.

22 Judgment of Supreme Administrative Court of 2 December 2019 r., case no. I OPS 2/19.

23 Letter from the Ministry of Justice to the Polish Society of Anti-Discrimination Law dated 2 March 2018, ref. DL-IV-082-1/18.

24 Ombudsman Office, NSA: WSA ma zbadać skargę RPO na uchwałę „anty-LGBT” sejmiku woj. lubelskiego.

25 The Guardian, Polish president issues campaign pledge to fight ‘LGBT ideology’

5. Migrants/refugees rights

5.1. **Pushback policy.** Since 2015, there have been reports of the Polish Border Guards pursuing a pushback policy on the border with Belarus, primarily at the border crossing in Terespol¹. The pushback policy was also continued in 2021. Since the beginning of the crisis on the Polish-Belarusian border in August 2021, it has moved from legal border crossings to forests on the border between Poland and Belarus. Since then, the media and non-governmental organizations started to document cases of the Polish Border Guard pushing migrants back from Poland to Belarus, despite them declaring their willingness to apply for asylum in Poland. Accurate statistics on the number of pushbacks are not possible to determine, but during the period of the greatest intensification of the crisis from September to November 2021, the Border Guard reported several hundred “prevented attempts to cross the border daily”. In the same period, NGOs reported receiving requests for help from several thousand people stranded on the Polish-Belarusian border. To date, more than 10 deaths of people trying to cross the Polish-Belarusian have been confirmed.²⁶

5.2. **State of emergency.** On September 2, 2021, a state of emergency was introduced in certain parts of the Podlaskie and Lubelskie Voivodeships. The Regulation provided for, inter alia, a ban on entry to the state of emergency for non-residents, as well as a ban on recording border infrastructure. The state of emergency lasted from September 2 to December 2, 2021. According to the Polish Constitution it is not possible to prolong it beyond 60 days. To bypass such limitations, on November 30, the Polish government adopted new provisions of the act amending the act on the protection of the state border. Additionally, under the new regulations, this area may be extended at any time, and the validity of these regulations may be extended as well. Humanitarian organizations, the media, activists and medics are still banned from entering the zone.

5.3. **Amendments to Act on foreigners.** In October 2021, the Parliament adopted a law introducing a simplified procedure of returning migrants who have crossed the border of Poland in an unauthorized manner. According to the new law a foreigner may be returned from Poland even if they make application for international protection and without assessing the risk of human rights violation. Appeal against the removal order shall not have suspensive effect. The law also allows for leaving their applications for inter- national protection without examination.

²⁶ Wyborcza.pl, Szczątki mężczyzny znaleziono w Puszczy Białowieskiej. Kolejna śmierć uchodźcy?

Detention centers for migrants. The situation in detention centers for migrants remain one of the key problems. According to the regulation of 13 August 2021 twice as many migrants can be placed in guarded centers as before. As in previous years, detention of children remains a problem. During 2021, there were 567 minors in the Guarded Centers for Foreigners, including 81 unaccompanied minors. The crisis on the Polish-Belarusian border has exacerbated the existing problems in the detention of foreigners. Media and non-governmental organizations alarmed about the bad conditions in detention centers.

Recommendations

- Ensure that every foreigner who wishes to apply for asylum in Poland is permitted to do so, in compliance with the Convention relating to the Status of Refugees;
- Lift restrictions on access to border areas, which would allow, inter alia, humanitarian organizations to provide effective assistance to people crossing the border;
- Adapt detention facilities to human rights standards and introduce a ban on detention of migrant and refugee children, as well as families with children.

6. Prohibition of torture

6.1. **Deficiency of the system of torture prevention.** In Poland, the state system of torture prevention has significant deficiencies. They result inter alia from the improper functioning of the Constitutional Tribunal as well as the lack of effective access to lawyer assistance before the first interrogation in a case. For example, the Constitutional Tribunal did not verify the provision of the Code of Criminal Procedure (Article 168a of the CCP) that forbids the public prosecution office or the court to reject a piece of evidence only because it has been obtained as a result of a breach of the procedure or a forbidden act. The provision is contrary to the European Convention on Human Rights. The Ombudsman who initiated the proceeding in this case withdrew the motion due to the lack of Tribunal's independence.

Recommendation

- Abolish Article 168a of the Code of Criminal Procedure, and guarantee that all decisions and judgments made within the course of criminal proceedings will be based on lawful pieces of evidence.

6.2. **Access to a lawyer.** Another major problem in the area of criminal law concerns access to a lawyer at the initial stage of criminal proceedings that in some type of cases may expose

defendant to excessive use of power of the law enforcement, including the Police. The Code of Criminal Procedure does not guarantee either the apprehended persons or defendants the possibility to contact a lawyer before their initial interrogation. It is particularly visible in the field of state-funded legal aid, where the right to be assisted by a lawyer is granted days or even weeks after the initial interrogation in the case. Moreover, despite systemic defectiveness in that field, the Code does not prevent use in the criminal proceedings of the statements made in the absence of a lawyer.

Recommendation

- Guarantee apprehended person access to a lawyer before the first interrogation in the case.

6.3. **Situation in detention facilities.** Despite numerous and various recommendations of the international bodies, in Poland the standard of living space per inmate has not been improved and remains on the insufficient level of only 3 m² per prisoner. Furthermore, the conditions in a special detention centre – the National Centre for the Prevention of Dissocial Behaviour in Gostynin – have deteriorated over last couple of years. The centre is an institution established to continue the detention of specific inmates after the formal expiration of their criminal sentence. In the last years, the Centre faced a huge increase in the number of inmates, resulting in the continuous overcrowding of the establishment.

Recommendations

- Guarantee detained persons appropriate living conditions, especially provide inmates with at least 4 m² of living space per inmate.
- Ensure that all residents of the National Centre for the Prevention of Dissocial Behaviour in Gostynin will be provided with appropriate healthcare and living conditions.

6.4. **Police brutality.** The number of cases in which the use of coercive measures by the police resulted in the death of an apprehended person raised significantly in recent years. In 2021, the HFHR identified at least 10 suspicious deaths of persons apprehended during police intervention. Furthermore, according to the European Committee for the Prevention of Torture (CPT) report persons taken into police custody in Poland are at risk of being ill-treated, in particular at the time of apprehension.

Recommendations

- Adopt measures to counteract the increasing number of deaths as a result of police intervention, especially by effectively providing apprehended persons a right to access a lawyer;

- Conduct effective investigation in all cases concerning deaths that occurred during police interventions.

7. Standing of civil society and cooperation with the authorities

7.1. **Functioning of civil society organizations.** Certain civil society organisations supporting migrants and refugees as well as victims of domestic violence were cut off from access to public funds for NGOs which forced them to significantly limit their work and support provided to people relying on their help. In 2018, the governing majority adopted provisions introducing civil remedies for tarnishing the reputation of the Republic of Poland. Although it has not been used since its adoption, still this law may lead to hampering the work of NGOs that routinely provide vital information to the European Union, the Council of Europe and the United Nations.

Recommendations:

- Cease any forms of legal or political harassment of civil society organizations;
- Develop the fair and unbiased system of distribution of public funds for civil society organizations;
- Abolish the provisions potentially negatively affecting the works of civil society organizations, including the provisions providing for criminal liability for tarnishing the reputation of the Republic of Poland.

7.2. **Freedom of assemblies.** The freedom of assemblies was significantly limited with adoption of legislation in December 2016 that provided a new category of assemblies, the so-called cyclical assembly. The status of a cyclical assembly is granted by the voivods (government's representatives in the regions) to selected types of assemblies. The effect of considering a meeting to be cyclical is a statutory guarantee of priority over any other meeting held at the same time or place. In practice, civil society organizations reported on examples of cases in which government-sponsored assemblies or those organized by the organizations closed to the government were given priority over the assemblies critical to the governmental policies. Furthermore, the freedom of assembly was restricted by the regulations adopted to prevent the spread of COVID-19 pandemic, regardless the significant doubts regarding the constitutionality of the legislation. The treatment of the protesters remains one of the key human rights concerns. For example, in October and November 2020, during the peak of anti-abortion ban protests civil society organizations and media reported on numerous cases of use of excessive force of the Police towards the protesters.

Recommendations

- Abolish the provisions providing different status of assemblies and allowing to favorize the government sponsored assemblies;
- Provide a legal and policy framework securing the safety and security of the peaceful protesters.

7.3. Lack of public consultations. In years 2017-2022, the government continued its practice of by-passing public consultations by submitting governmental draft Acts by its MPs. In such a situation, the parliament was not obliged to conduct public consultations. The problem of lack of public consultations was particularly visible (but not only) during the COVID-19 pandemic, where the majority of government legislation concerning epidemic restrictions was not consulted with stakeholders, NGOs, or other actors. It resulted in a continuous need for repeated amendments of the regulation. In addition to this, the acts on counteracting the COVID-19 epidemic were sometimes used as a method to introduce solutions not even indirectly combined with counteracting pandemic.

Recommendation

- Adopt measures to guarantee civil society representatives effective participation in the legislative process.

