

## AMNESTY INTERNATIONAL SUBMISSION

# Poland: Submission to the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) on aspects of the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Poland

28 November 2025

Reference Number: TG IOR 10/2025.7214

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Amnesty International is submitting this input to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). Poland signed the Istanbul Convention on 8 December 2012 and ratified it on 27 April 2015. With regard to the Polish authorities' response, in October 2025, to the Recommendations of the Committee of the Parties adopted on 7 December 2021,<sup>1</sup> Amnesty International notes that it omits the important issue set out in the Recommendations, namely the amendment to the Criminal Code regarding sexual offences.

This submission outlines Amnesty International's concerns regarding Poland's compliance with the Istanbul Convention, focussing specifically on the obligation, under Article 36, for immediate action to reform all sexual offences contained in Chapter XXV of the Polish Criminal Code to fully incorporate the notion of freely given consent, and ensure appropriate sanctions for all sexual acts without the consent of the victim, including where the circumstances preclude valid consent.<sup>2</sup>

### Legal definition of rape

In June 2024, the Polish Parliament passed an amendment to the Criminal Code, introducing a new definition of rape that criminalizes sexual intercourse without consent. According to the new law, rape is defined as "subjecting another person to sexual intercourse through violence, unlawful threat, deception, or by any other means despite their lack of consent."<sup>3</sup> The new law came into force on 13 February 2025. The long-awaited amendment introduced the concept of consent into Article 197 of the Polish Criminal Code. The previous wording of the definition of rape in the Polish Criminal Code had detrimental consequences as trials tended to focus on establishing whether the alleged perpetrator used force, unlawful threat or deceit to overcome the victim's "resistance". This wording often resulted in the authorities focusing not on the survivor's absence of consent, but rather on the level of opposition, how that was

<sup>1</sup> Istanbul Convention Action against violence against women and domestic violence, Country Monitoring: Poland, <https://www.coe.int/en/web/istanbul-convention/poland1>.

<sup>2</sup> GREVIO Baseline Evaluation Report Poland, paragraph 220, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>.

<sup>3</sup> Amendment to the Criminal Code of June 28, 2024 (Ustawa z dnia 28 czerwca 2024 r. o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20240001228/O/D20241228.pdf>.

communicated, and for how long.<sup>4</sup> The new law recognizes that sex without consent is rape, bringing Poland's legal definition of rape in line with international human rights standards.

However, the revised law continues to overlook a significant inequality in the Criminal Code, in breach of international human rights law. Article 198 penalizes "taking advantage of a person's vulnerability or mental disability or disorder to subject them to sexual intercourse or to make them submit to another sexual act or perform such an act."<sup>5</sup> This is a mitigated form of rape which carries a penalty of 6 months to 8 years imprisonment while the base form carries a penalty of 2 to 15 years. As a consequence, sexual violence against persons with mental disabilities or disorders is punished less severely. This only adds to a systemic disregard for the rights of persons with disabilities.<sup>6</sup>

Rape is an equally brutal and harmful act committed against persons with mental disabilities and disorders, and everyone, no matter their mental health status and their abilities, should be equally protected from sexual violence. The wording of Article 198 may lead to an interpretation that when people with disabilities are raped, the fact they have such disabilities should be considered a mitigating circumstance, thus focusing on their purported helplessness, potential dependence or disability rather than their sexual autonomy and right to be free from violence.

The Istanbul Convention requires situations in which the perpetrator abused their authority, as well as those where the offence was committed against a person made vulnerable, to be considered as aggravating circumstances.<sup>7</sup> The fact that the offences covered by Article 198 of the Polish Criminal Code carry lower criminal sanctions than rape as defined by Article 197 indicates that they are in fact considered mitigating factors.

As stressed in GREVIO's first (Baseline) Evaluation Report on Poland, all sexual acts without the consent of the victim shall give rise to dissuasive sanctions.<sup>8</sup> Differentiating a lack of consent based on a person's vulnerability or mental disability or disorder is contrary to the concept of freely given consent expressed in Article 36 of the Istanbul Convention. Thus, Polish authorities should reform Article 198 of the Polish Criminal Code so that everyone is equally protected from rape and other sexual violence, as well as comprehensively address the need for the legislation to cover a range of aggravating circumstances as per Article 46 of the Istanbul Convention.

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<sup>4</sup> Judgment of the Supreme Court of 18 February 2014 (case no. II KK 19/14), <http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%2019-14.pdf>.

<sup>5</sup> Criminal Code (Kodeks Karny), article 198, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>.

<sup>6</sup> Amnesty International, Polska: Definicja gwałtu oparta na zgodzie to kluczowy krok w pożądanym kierunku, jednak nie chroni najbardziej narażonych osób, 8 July 2024, <https://www.amnesty.org.pl/polska-definicja-gwaltu-kluczowy-krok-jednak-nie-chroni-najbardziej-narazonych/>.

<sup>7</sup> Istanbul Convention, Articles 46(a) and (c).

<sup>8</sup> GREVIO Baseline Evaluation Report Poland, paragraph 218, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>.