

Poland

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

► Conditions of detention / remedies

In 2008, the conditions of detention in remand centres and prisons were improved and facilities were constructed or renovated. Legal safeguards were introduced to ensure a minimum accommodation area per detainee and to provide for improved outdoor or other activities. In addition, regulations were adopted in 2010 and in 2016 to improve prisoners' health care, including those with HIV. In order to detect suicidal tendencies, monitoring of a detainee's behaviour was authorised in 2009, based on medical reasons or on the need to ensure their security. Related decisions can be appealed before courts.

Placement under a special regime for "dangerous detainees" is no longer automatic and flexibility in the application of restrictions related to the regime (including stripe searches) was introduced (amendments to the Code of Execution of Criminal Sentences). The application of the regime is reviewed by the Penitentiary Commissions and the courts. Furthermore, such prisoners were granted better access to media, culture and physical exercise.

The 1997 Code of Execution of Criminal Sentences was amended in 2003 and 2012 to improve the safeguards concerning the prisoners' right to respect for their correspondence. Amendments of the Code of Execution of Criminal Sentences in 2010 provided that a detainee is entitled to at least one family visit per month and to appeal refusals.

Amendment to the 1997 Code of Execution of Criminal Sentences that entered into force on 1 January 2023 comprehensively address the rules of conducting searches of the convicted persons and detainees on remand, including body searches and imposes an obligation to inform the searched person about actual and legal basis for the search and provides a remedy against such search.

Orchowski (17885/04+)
Final Resolution
CM/ResDH(2016)254

Kaprykowski (23052/08+)
Final Resolution
CM/ResDH(2016)278

Jasinska (28326/05)
Final Resolution
CM/ResDH(2014)27

Horych (13621/08+)
Final Resolution
CM/ResDH(2016)128

Klamecki No.2 (31583/96+)
Final Resolution
CM/ResDH(2013)228

Milka (14322/12)
Final Resolution
CM/ResDH(2024)387

► Right to liberty and security

➤ Lawfulness of detention

The 1998 Code of Criminal Procedure reorganised proceedings regarding the lawfulness of detention on remand. After 2000, important reforms were introduced to limit recourse to detention on remand and its duration, including: adequate possibilities for appealing detention decisions by granting access to relevant investigation material and by reinforcing the right to be heard in person by the competent judge. The law provides for the possibility to claim compensation in cases of unlawful detention. The Mental Health Protection Act, as amended in 2018, establishes an obligation of periodic examination of the mental health state of all persons admitted to a social care home in order to ensure that a person's stay therein is lawful.

Obligation for courts to adopt a specific decision subject to appeal for each extension of detention in a juvenile shelter and specific procedure in this respect were introduced in the Act on the Support and Resocialisation of Minors from 1 September 2022.

Niedbala (27915/95)
Final Resolution
CM/ResDH(2002)124

Chruscinski (22755/04)
Final Resolution
CM/ResDH(2011)142

Bruczynski (19206/03)
Final Resolution
CM/ResDH(2012)43

Kedzior (45026/07+)
Final Resolution
CM/ResDH(2018)228

Grabowski (57722/12)
Final Resolution
CM/ResDH(2022)337

➤ Detention in view of expulsion

The 2003 Law on Aliens provides that placement in detention and its extension must be based on a judicial decision and is subject to appeal in accordance with the provisions of the Code of Criminal Procedure. It also provides for the award of compensation to foreigners who have been detained illegally.

Shamsa (45355/99+)
Final Resolution
CM/ResDH(2008)15

➤ **Functioning of justice**

➤ Access to court and fairness of proceedings

In 1998, the Code of Criminal Procedure was amended to limit the appeal courts' discretion to decide whether or not to grant a defendant in detention leave to appear at the appeal hearing.

In 2000, a second amendment obliges the appeal courts to grant the defendants this right.

Furthermore, the system of court fees in civil proceedings was reformed in 2006, notably, to improve the possibilities of exemption from court fees. The system of legal aid was reformed in 2010.

In juvenile criminal cases, the law in 2014 provides for the obligatory assignment of a defence counsel and abolishes the possibility that judge alone to lead the investigation and rule on the merits of a case.

In order to ensure the fairness of lustration proceedings, legislation was adopted in 2006, defining the instances when case files could be excluded from publicity and providing for a continuous monitoring of the classification of documents. A 2010 law provides for the right of access to all documents held by the Institute of National Remembrance.

➤ Remedies in case of excessive length of court proceedings

A remedy to complain against the excessive length of proceedings was introduced in 2004 and reformed in 2009 and 2016. In 2013, a resolution of the Supreme Court remedied certain deficiencies in its application.

Belziuk (23103/93)
Final Resolution
CM/ResDH(2001)9

Kreuz No. 1 (28249/95+)
Final Resolution
CM/ResDH(2011)67

Tabor (12825/02+)
Final Resolution
CM/ResDH(2011)239

Adamkiewicz (54729/00)
Final Resolution
CM/ResDH(2014)171

Matyjek (38184/03+)
Final Resolution
CM/ResDH(2014)172

Joanna Szulc (43932/08)
Final Resolution
CM/ResDH(2014)60

Kudła (30210/96)
Final Resolution
CM/ResDH(2015)248

➤ **Protection of private and family life**

➤ Access to one's children and international child abduction

To facilitate the enforcement of access arrangements and return orders on the basis of the Hague Convention on International Child Abduction, the Code of Civil Procedure was amended in 2011 to streamline and accelerate relevant proceedings, as well as imposing pecuniary penalties on non-compliant parents.

Pawlik (11638/02+)
Final Resolution
CM/ResDH(2014)295

➤ **Freedom of expression**

The 2017 Press Act replaced criminal liability for quotations without an authorisation by a misdemeanour liability subject to a fine. The rules concerning the requirement to obtain authorisation for the publication of an interview and the time-limits thereof have been clarified. According to the new provisions, authorisation is not required if the statement has already been previously presented publicly. Misdemeanour liability for publishing without authorisation may also be excluded if a journalist exercises due diligence and publishes a text which is consistent with the original statement.

Wizerkaniuk (18990/05)
Final Resolution
CM/ResDH(2019)198

<p>➤ Freedom of association</p>	<p>The 2015 Assemblies Act provided that the notice on a planned assembly is to be transmitted to the municipal authorities no earlier than 30 days and no later than six days in advance; municipal authorities are obliged to issue a decision which bans the assembly no later than 96 hours before the planned date of the event. The organiser has 24 hours to lodge an appeal to the Regional Court which must decide within 24 hours. Its decision can be appealed within 24 hours before the Court of Appeal. There is no cassation appeal available, and the final order of the Court of Appeal must be executed immediately.</p>	<p><i>Bączkowski</i> (1543/06) Final Resolution CM/ResDH(2015)234</p>
<p>➤ Protection against discrimination</p>	<p>➤ <u>on religious grounds</u> To remedy the discriminatory treatment of agnostic pupils, the Minister of Education's Ordinance on religious instruction of 1992 was amended in 2014 to annul the minimum threshold required for the organisation of ethics classes</p> <p>➤ <u>on sexual orientation grounds</u> The 1994 Act on Lease of Dwellings and Housing Allowances was repealed in 2001 and the rules governing succession of rental contracts were included in the Civil Code. In the event of a tenant's death, a person who has <i>de facto</i> lived together with the deceased tenant shall succeed to the tenancy agreement without the necessity of the cohabitation being "marital". Domestic courts recognize same-sex partners as <i>de facto</i> cohabitants.</p>	<p><i>Grzelak</i> (7710/02) Final Resolution CM/ResDH(2014)85</p> <p><i>Kozak</i> (13102/02) Final Resolution CM/ResDH(2013)81</p>
<p>➤ Protection of property rights</p>	<p>➤ <u>Compensation for property lost after the Second World War</u> In 2005, a new legislative scheme was set up to honour the Republic of Poland's undertaking to provide compensation for property abandoned after World War II in areas beyond the present Polish borders, thereby remedying the defective earlier scheme. Compensation was set at 20% of the properties' original value and claimants could seek pecuniary and non-pecuniary damages caused by the defective operation/functioning of the earlier scheme.</p> <p>➤ <u>Rent control</u> Between 2005 and 2010, a new system was introduced to permit the monitoring of rent increases, leasing contracts based on a freely determined rent ("occasional lease") and funding for social accommodation. It also enables landlords to recover costs incurred due to maintenance of their properties.</p>	<p><i>Broniowski</i> (31443/96) Final Resolution CM/ResDH(2009)89</p> <p><i>Hutten-Czapska</i> (35014/97) Final Resolution CM/ResDH(2016)259</p>
<p>➤ Freedom of movement</p>	<p>As from 2008, the practice of courts and prosecutors changed to avoid the disproportionate application of travel bans as a preventive measure in the context of criminal proceedings as well as to ensure that the measure is lifted immediately after the circumstances justifying its application cease to exist or new circumstances arise. A respective request is to be decided by a court or prosecutor within three days.</p>	<p><i>Miażdżyk and A.E.</i> (23592/07+) Final Resolution CM/ResDH(2016)261</p>