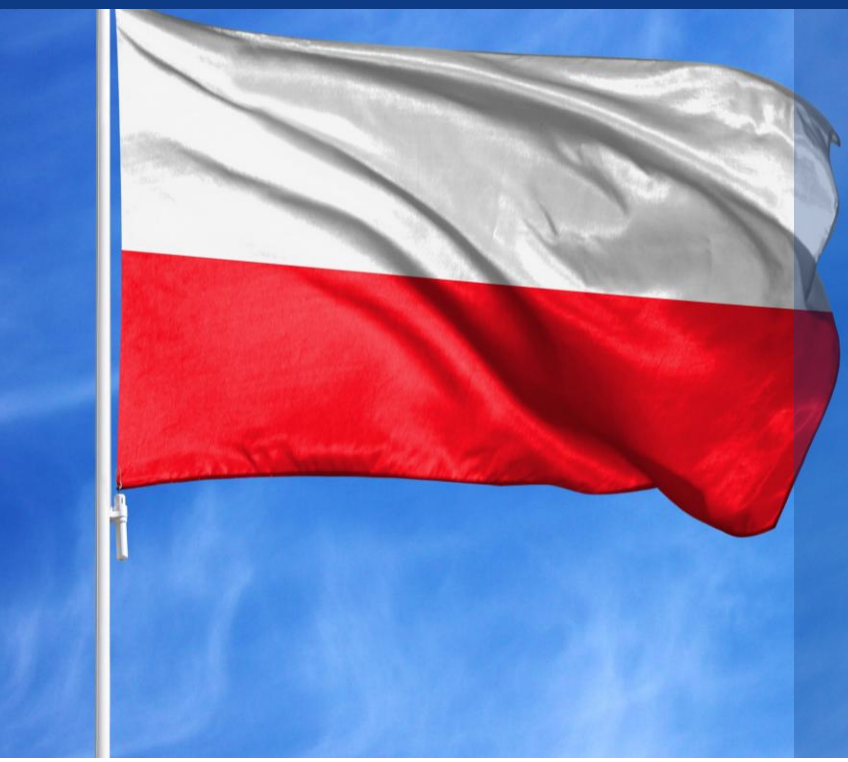
# POLAND



## Department for the Execution of Judgments of the European Court of Human Rights

Directorate General
Human Rights and Rule of law

## Country factsheet

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# I. Main achievements

This chapter presents short summaries 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, government regulations, the adoption of new policies or general guidance from superior courts. As a rule, the overview does not cover information on measures providing individual redress to applicants.

The reforms are in principle presented in the order corresponding to the thematic domains used in the specialised database HUDOC-EXEC of the Department for the Execution of Judgments of the European Court of Human Rights.

Many reforms address issues which appear to be on-going challenges in member states. The effects of reforms adopted at one point in time may thus need to be monitored and possibly revisited as conditions change.[1]

Definitions of the terms used in the context of the supervision of the execution of the European Court's judgments are available in the dedicated Glossary.

[1] 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.

***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**

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.

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

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.

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

## 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.

***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**

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.

***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.

***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**

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.

***Matyjek*** (38184/03+)
**Final Resolution CM/ResDH(2014)172**
***Joanna Szulc*** (43932/08)
**Final Resolution CM/ResDH(2014)60**

- 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.

***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**

## Freedom of association

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

***Bączkowski and Others*** (1543/06)
**Final Resolution CM/ResDH(2015)234**

| | |
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| Appeal. There is no cassation appeal available, and the final order of the Court of Appeal must be executed immediately. | |
| **Protection against discrimination** | |
| ➢ on religious grounds | |
| 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. | ***Grzelak*** (7710/02)<br>**Final Resolution CM/ResDH(2014)85** |
| ➢ on sexual orientation grounds | |
| 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 de facto 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 de facto cohabitants. | ***Kozak*** (13102/02)<br>**Final Resolution CM/ResDH(2013)81** |
| **Protection of property rights** | |
| ➢ Compensation for property lost after the Second World War | |
| 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. | ***Broniowski*** (31443/96)<br>**Final Resolution CM/ResDH(2009)89** |
| ➢ Rent control | |
| 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. | ***Hutten-Czapska*** (35014/97)<br>**Final Resolution CM/ResDH(2016)259** |
| **Freedom of movement** | |
| 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. | ***Miażdżyk and A.E.*** (23592/07+)<br>**Final Resolution CM/ResDH(2016)261** |



# II. Main issues pending before the Committee of Ministers

This chapter presents the main issues pending in cases/groups of cases currently under the Committee of Ministers' supervision. The relevant supervision procedure is indicated for each case/group of cases.

Detailed information on the status of execution of these cases as well as on the Committee of Ministers' supervision process is available on the specialised database HUDOC-EXEC of the website of the Department for the Execution of Judgments of the European Court of Human Rights.

Definitions of the terms used in the context of the supervision of the execution of the European Court's judgments are available in the dedicated Glossary.

## Actions of security forces and effective investigations

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

***Al Nashiri*** (28761/11)
***Husayn (Abu Zubaydah)*** (7511/13)
Judgment final on 16/02/2015
Enhanced supervision
**Status of execution**

**Excessive use of force** by the Police during the applicants' arrest in February 2015 and ineffective investigation in the circumstances of this incident.

***Kuchta and Mętel*** (76813/16)
Judgment final on 02/12/2021
Enhanced supervision
**Status of execution**

## Degrading treatment

**Refusal of border guards to receive asylum application** and summary removal to a third country with a risk of refoulement to and ill-treatment in the country of origin. Collective expulsion of aliens in a wider state policy of refusing entry to foreigners coming from Belarus. Lack of effective remedy with a suspensive effect. Non-compliance with interim measures under Rule 39.

***M.K. and Others*** (40503/17)
Judgment final on 14/12/2020
Enhanced supervision
**Status of execution**

## Ineffective investigation and discrimination

**Failure to unmask and address the homophobic motive of an assault** through effective investigation, legal classification, and adequate sentencing

***Bednarek and Others*** (58207/14)
Judgment final on 10/10/2025
Enhanced supervision
**Status of execution**

## Functioning of justice - tribunal established by law

**Tribunal not established by law** due to the participation in of an irregularly appointed judge of the Constitutional Court in a panel that rejected the applicant's company constitutional complaint.

***Xero Flor w Polsce sp. z o.o.*** (4907/18)
Judgment final on 07/08/2021
Enhanced supervision
**Status of execution**

**Tribunal not established by law** due to the fact that the judges of the various chambers in the Supreme Court that dealt with the applicants' cases were appointed "in an inherently deficient procedure" on the motion of the National Council of the Judiciary lacking independence from the legislature and the executive.

***Reczkowicz* group** (43447/19)
Judgment final on 22/11/2021
Enhanced supervision
**Status of execution**

***Wałęsa*** (50849/21)
Judgment final on 06/02/2024
Enhanced supervision
**Status of execution**

## Functioning of justice - access to a court

Lack of access to a court to challenge premature termination of the terms of office of vice-presidents of a regional court, dismissed on the basis of temporary legislation, providing no safeguards against arbitrariness.

***Broda and Bojara*** (26691/18)
Judgment final on 29/09/2021
Enhanced supervision
**Status of execution**

Lack of access to a court to challenge premature *ex lege* termination of the mandate of a judicial member of the National Council of the Judiciary.

***Grzęda* (43572/18)**
Judgment final on 15/03/2022
Enhanced supervision
**Status of execution**

| | |
|---|---|
| Lack of access to a court to challenge a decision of the Minister of Justice not allowing a judge to continue adjudication beyond retirement age | ***Pajqk and Others*** (25226/18)<br>Judgment final on 24/01/2024<br>Enhanced supervision<br>Status of execution |
| **Length of judicial proceedings** | |
| **Excessive length of civil and criminal proceedings** and lack of an effective remedy, principally on account of:<br>- the domestic courts' failure to take into account the entirety of proceedings when evaluating their duration;<br>- disproportionately low amounts of compensation awarded by domestic courts. | ***Bąk* group** (7870/04)<br>Judgment final on 16/04/2007<br>***Majewski* group** (52690/99)<br>Judgment final on 11/01/2006<br>***Rutkowski and Others*** (72287/10+)<br>Judgment final on 07/10/2015<br>Enhanced supervision<br>**Status of execution** |
| Excessive length of proceedings before administrative bodies and courts. Absence of an effective remedy. | ***Beller* group** (51837/99)<br>Judgment final on 06/06/2005<br>Enhanced supervision<br>**Status of execution** |
| **Respect for private life** | |
| ➢ Abortion and procreation | |
| Lack of effective access to reliable information on the conditions and procedures for a lawful abortion; unwarranted disclosure of personal data to the public by the hospital eventually carrying out lawful abortions and unjustified detention in a juvenile shelter to convince not to abort. | ***P. and S.*** (57375/08)<br>Judgment final on 30/01/2013<br>Enhanced supervision<br>**Status of execution** |
| Impossibility of obtaining a lawful abortion in Poland on grounds of foetal abnormalities, resulting from a Constitutional Court judgment delivered in October 2020 by a bench not complying with rule-of-law requirements and in circumstances marked by a lack of foreseeability. | ***M.L.*** (40119/21)<br>Judgment final on 14/03/2024<br>Enhanced supervision<br>**Status of execution** |
| ➢ Lack of recognition of same-sex unions | |
| Absence of specific legal framework providing for the recognition and protection of their same-sex unions. | ***Przybyszewska and Others* group** (11454/17)<br>Judgment final on 12/03/2024<br>Enhanced supervision<br>**Status of execution** |
| ➢ Secret surveillance | |
| Insufficient guarantees provided by law against arbitrariness and abuse as regards secret surveillance, retention and access to communications data. | ***Pietrzak, Bychawska-Siniarska and Others*** (72038/17)<br>Judgment final on 28/08/2024<br>Enhanced supervision<br>**Status of execution** |
| **Disciplinary and other measures applied against judges** | |
| Application of measures against a judge, judicial member and spokesperson of National Council of the Judiciary, in connection with his views expressed in defence of the rule of law and judicial independence. | ***Żurek*** (39650/18)<br>Judgment final on 10/10/2022<br>Enhanced supervision<br>**Status of execution** |

Suspension of a judge from exercising judicial duties within disciplinary procedure on manifestly unreasonable and unforeseeable grounds applied by a body which was not a tribunal established by law.

Lifting of judicial immunity by a body that cannot be considered an independent and impartial tribunal established by law, that together with disciplinary inquiries into the applicant requesting preliminary ruling from the Court of Justice of the EU and participating in public meetings and TV programmes affected his private life and freedom of expression.

***Juszczyszyn*** (35599/20)
Judgment final on 30/01/2023
Enhanced supervision
**Status of execution**

***Tuleya*** (21181/19)
Judgment final on 06/10/2023
Enhanced supervision
**Status of execution**



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