

Frant National contribution to the Fundamental Rights Report 2023

Poland

Contractor's name: Helsinki Foundation for Human Rights

Authors' name: Anna Śledzińska-Simon, Katarzyna Słubik, Ada
Tymińska, Filip Bakierski, Maciej Kalisz

Disclaimer: This document was commissioned under contract by the European Union Agency for Fundamental Rights (FRA) as background material for the project 'FRA Fundamental Rights Report 2023'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Contents

Franet country study: policy and legal highlights 2022	4
1 Equality and non-discrimination	6
1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination focussing on LGBTIQ people and combating discrimination on the grounds of socio-economic status, health status and physical appearance	6
1.2 Findings and methodology of research, studies, or surveys on experiences of discrimination against LGBTIQ people and on the grounds of socio-economic status, health status and physical appearance.....	11
2 Racism, xenophobia and related intolerance.....	13
2.1 Data, research findings, studies, or surveys on experiences of ethnic discrimination, racism and hate crime	13
2.2 Legal and policy developments or measures relating to the application of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive.....	14
3 Roma equality and inclusion	18
3.1 Policy developments in regards to the implementation of national action plans	18
3.2 Legal and policy developments or measures directly or indirectly addressing Roma/Travellers equality and inclusion	21
4 Asylum, borders, visas, migration and integration.....	24
4.1 National legal framework on criminalisation of 'humanitarian assistance' and domestic transposition of sanctions.....	24
4.2 Use of the large-scale IT Systems in the area of asylum, migration and border control	32
5 Information society, privacy and data protection.....	34
5.1 Initiatives in the use of artificial intelligence in both private and public sectors.....	34
5.2 Legal and policy initiatives on data protection and private life	45
6 Rights of the child.....	51
6.1 Measures addressing vulnerabilities of children living in poverty and developments regarding the national implementation of the EU Child Guarantee	51
6.2 Legal and policy developments or measures in relation to child-friendly procedures for children as victims, witness or suspects/accused in criminal proceedings.	56

7	Access to justice – Victims’ Rights and Judicial Independence	62
7.1	Legal and policy developments or measures relevant to the implementation of the Victims’ Rights Directive and the EU strategy for Victims’ Rights 2020-2025	62
7.2	Measures addressing violence against women	64
8	Developments in the implementation of the Convention on the Rights of Persons with Disabilities	68
8.1	CRPD policy and legal developments & implementation of the European Accessibility Act.....	68
8.2	CRPD monitoring at national level	70
	Annex 1 – Promising Practices	72
	Annex 2 – Case Law	89

Policy and legal highlights 2022

Franet country study: policy and legal highlights 2022	
Issues in the fundamental rights institutional landscape	New Chamber of Professional Responsibility in the Supreme Court. On 15 July 2022, an amendment to the Supreme Court Act entered into force, officially dissolving the Disciplinary Chamber and establishing the Chamber of Professional Responsibility in its place. It is composed of 11 judges selected from 33 previously drawn Supreme Court judges. Its political independence is thus in question.
EU Charter of Fundamental Rights	Documents for children born to same-sex parents abroad. The CJEU delivered a ruling concerning identity documents issued to children of same sex parents , based on Articles 7 and 24 of the Charter. The Court has ordered that a Member State of which that child is a citizen is obliged to issue that child with an identity document, without requiring the transcription of that child's birth certificate.
Equality and non-discrimination	National Action Program for Equal Treatment. The government adopted the National Action Program for Equal Treatment for 2022-2030 on 24 May 2022. The program adds new priority areas: awareness building, data collection and research, and coordination, but leaves differences in the level and areas of protection of different categories of people.
Racism, xenophobia & Roma Equality and Inclusion	Amendment of the Criminal Code and anti-Roma sentiments. The Act amending the Criminal Code was adopted, which expressly renders hatred due to the national, ethnic or racial affiliation of the victim an aggravating circumstance . Roma refugees fleeing Ukraine are likely to be subject to discrimination in reception centers and in access to services due to anti-Roma sentiments among workers.
Asylum & migration	Humanitarian crisis at the Belarusian border. In 2022, the construction of a wall on the Polish-Belarusian border began – on the terms specified in the law adopted in 2021 . Work is underway to connect the surveillance control system. The criminalization of humanitarian aid in Poland continued , affecting persons who provided humanitarian assistance to migrants and those who documented the crisis.
Data protection and digital society	Central Anti-Cybercrime Bureau. In 2022, the Central Anti-Cybercrime Bureau was established as a nationwide organizational unit of the Police, the purpose of which is to support other Police units in identifying, preventing and combating cybercrimes.
Rights of the child	Lowering the age of juvenile offenders. The Act on the support and resocialization of juveniles entered into force. The act sets the minimum age of criminal liability for juvenile perpetrators at the level of 10 years

	old and introduces the obligatory referral to a correctional facilities of juveniles who committed the most serious crimes.
Access to justice, including victims of crime	Amendment of the Criminal Code and the law against domestic violence. A major amendment to the Criminal Code was adopted which criminalises non-compliance with compensation measures ordered in favour of the victim. The Sejm passed a law amending anti-violence legislation , introducing new measures to isolate perpetrators of domestic violence from their victims.
Convention on the Rights of Persons with Disability	Personal assistance for people with disabilities. Work is currently underway in the President's office on a draft law on personal assistance for people with disabilities .

1 Equality and non-discrimination

1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination focussing on LGBTIQ people and combating discrimination on the grounds of socio-economic status, health status and physical appearance

No legislative developments. Over the past year, Poland has not introduced any legislation to improve the situation of LGBTIQ people living in Poland. There have been no attempts to regulate marriage equality or any form of legalization of same-sex relationships. Legal gender recognition still requires filing a lawsuit against the parents. At the same time, 64 percent of Poles are in favor of introducing same-sex civil unions (of which 28 percent favor marriage equality). In contrast, 33 percent of those surveyed believe that the law should not change, so non-heteronormative people should not have the right to either marriage or civil unions.¹

At the same time, the number of equality parades organized in Poland is growing every year. In 2022 they were conducted in 29 cities, including small towns, and in the East of Poland.²

National Action Program for Equal Treatment for 2022-2030. The government adopted the National Action Program for Equal Treatment for 2022-2030 on 24 May 2022.³ This is the second national action program established pursuant to Article 22 of the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment, prepared on the basis of evaluation of the first program for 2013-2016. The program for 2022-2030 singles out new priorities: awareness building, data collection and research, and coordination. Whereas the program provides for supporting groups at risk of discrimination in the labour market on grounds of age, disability, race, nationality, ethnic origin, religion, belief and sexual orientation and family status (within the Priority Area: Employment and Social Protection), it does not foresee any specific tasks addressing problems experienced by the LGBTIQ persons. In

¹ Ipsos poll for OKO.press, May 10-12, 2022. More at: A. Ambroziak, *Rośnie poparcie dla związków partnerskich i równości małżeńskiej. Władza tego nie zatrzyma* [Support for civil unions and marriage equality is growing. The authorities will not stop it] <https://oko.press/rosnie-poparcie-dla-zwiazkow-partnerskich-i-rownosci-malzenskiej-wladza-tego-nie-zatrzyma-sondaz-oko-press/>

² <https://mnw.org.pl/marsze2022/>

³ Resolution No. 113 of the Council of Ministers of 24 May 2022, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WMP20220000640/O/M20220640.pdf>

comparison, such tasks are planned in relation to women, persons with caring responsibilities, or persons with disabilities.

The Priority Area: Health draws attention to the problem of inequalities resulting from economic and social status and undertakes to improve access to health services for persons at risk of exclusion. Within the framework of this objective, the government plans to reduce inequalities in health resulting from socio-economic conditions and improve the accessibility of mental health care. The health priority also includes the implementation of the project "Reducing social inequalities in health through the use of telemedicine and e-health solutions." It targets social groups in Poland that, due to their socio-economic situation, require urgent support. These people live in non-urbanised areas, are located at a considerable distance (several tens of kilometres) from health centres and are often characterised by low income. However, the program overlooks a problem of lower standards of the healthcare offered to non-heterosexual patients, caused by widespread stereotypes of the LGBTIQ community among healthcare professionals.

Significantly, in the Priority Area: Access to Goods and Services, among the groups at risk of discrimination, the program mentions people with special needs, including, among others, people with disabilities, the elderly and those weakened by illness, women, pregnant women, people with young children, including pushchairs, people with communication difficulties (including understanding written or spoken language). The programme therefore clearly overlooks problems with equal access to services for LGBTIQ persons.

The Ombudsman expressed critical comments on the adopted program, noting that the Ombudsman's Office was not involved in its preparation. The Ombudsman raises the need to equalise the protection of protected groups in all spheres. In its opinion, the limitation of the protection against unequal treatment to a few selected spheres and grounds results in the fact that persons experiencing discrimination in spheres other than those covered by the prohibition of discrimination under the Equal Treatment Act, or due to other characteristics than those protected by this act, do not benefit from a simplified mechanism of claiming compensation for damage and harm caused by violation of the principle of equal treatment. Although they can avail themselves of the protection of the Civil Code, this puts them in a less favourable procedural position. This is because they are not entitled to the benefit of a reversed burden of proof. This differentiation of access to legal remedies against discrimination seems discriminatory in itself. Moreover, in the view of the Ombudsman, it is advisable to grant the Equal Treatment Body the competence to act in cases of violations of the principle of equal treatment also in relations between private entities.⁴

⁴ <https://bip.brpo.gov.pl/pl/content/rpo-rowne-traktowanie-rzad-odpowiedz>

The Ombudsman also notes that crimes committed on the basis of prohibited grounds of discrimination, such as sexual orientation, gender identity, gender, disability and age, do not constitute specific crimes (so-called hate crimes) under the current criminal law. The Ombudsman thus recommends the amendment of the Criminal Code pursuant to which crimes motivated by prejudice also on grounds other than race, national or ethnic origin, religion and irreligion, are prosecuted ex officio and punished as a qualified form of criminal behaviour and the creation of a statutory definition of hate speech.⁵

Administrative courts overturned homophobic resolutions of local councils declaring "LGBT-free zones."⁶ Courts upheld the interpretation adopted by the Supreme Administrative Court (further as SAC) in the decision of 2 July 2021, III OSK 3682/21, according to which the challenged resolutions are acts of an organ of the local government. Hence, the resolutions are subject to review by administrative courts. All these proceedings were initiated by complaints filed by the Ombudsman and involved numerous non-governmental organizations as participants in these proceedings. Notably, the NGOs participating in the proceedings both supported the invalidation of these resolutions and alleged the lack of cognition of administrative courts to review them. In all cases decided in 2022, the courts invalidated the resolutions as inconsistent with the Local Government Act, the Education Law and the constitutional principle of equality and the right of parents to raise their children in accordance with their own beliefs. They also held that the resolutions declaring "LGBT-free zones" constituted discriminatory interference with, among other things, respect for human dignity and the right to respect for private life.⁷

Importantly, the judgments of the Regional Administrative Courts in four cases are final, as the Supreme Administrative Court dismissed the cassation filed by the prosecutor's office, the councils of the relevant local governments and *Ordo Iuris*. In the judgments dismissing the cassation, the Supreme Administrative Court unequivocally stated that the resolutions in question led to violations of human dignity and the prohibition of discrimination.⁸

A child born abroad to same-sex parents, one of whom is a Polish citizen, has the right to confirmation of Polish citizenship. The Supreme Administrative Court stated that the confirmation of Polish citizenship should not

⁵ Id.

⁶ These resolutions indicated that their purpose was to contain so-called "gender and LGBT ideology". See also A. Ploszka, From human rights to human wrongs. How local government can negatively influence the situation of an individual. The case of Polish LGBT ideology-free zones, *International Journal of Human Rights* (2022).

⁷ Judgments of the Regional Administrative Court in Kraków of 10.01.2022, III SA/Kr 975/21 and III SA/Kr 976/21; judgment of the Regional Administrative Court in Rzeszów of 29.03.2022, II SA/Rz 1825/21; judgments of the Regional Administrative Court in Lublin of 05.2022, III SA/Lu III 751/21 and III SA/Lu 8/22.

⁸ Judgments of the Supreme Administrative Court of 28.06.2022, III OSK 3746/21; III OSK 4240/21; III OSK 4041/21 and III OSK 4028/21.

be clemency of the state when a provision of substantive law clearly stipulates an obligation to do so. It overturned both the judgment of the Regional Administrative Court and the preceding decisions of administrative bodies refusing to confirm the Polish citizenship of a daughter of a Polish citizen, solely on the grounds that her birth certificate indicates same-sex parents (two men). In addition, the SAC stressed that the evidentiary proceedings carried out by the state authorities - especially the need to provide genetic tests that confirmed the biological bond between the child and the father - was a disproportionate hardship to which the girl was subjected. It follows that the public order clause should be applied carefully and interpreted narrowly in each case. The SAC also obliged the Mazovian Governor to issue a decision on confirmation of Polish citizenship within 30 days of the ruling.⁹

Draft law on children born abroad to same-sex parents. The Ministry of Justice prepared a draft law amending the Family and Guardianship Code and some other laws.¹⁰ The aim of the draft law is to address the discrepancy in the jurisprudence of Polish courts which concerns the effects of transcription of foreign civil status records confirming events unknown to Polish law or unrecognized in the Polish legal order, such as, among others, marriages of persons of the same sex, other registered unions of these persons and same-sex parenthood and introduces the institution of a certificate issued for the purpose of exercising rights arising from the EU freedom of movement of persons. At the same time, the draft extensively refers to the resolution of seven judges of the Supreme Administrative Court of 2 December 2019, II OPS 1/19, stating that the transcription of a foreign civil status certificate, in which the parents of a child are indicated as persons of the same sex, is incompatible with the Polish legal order, in which always the parents of a child are a man and a woman. However, the SAC confirmed that refusal of transcription may not lead to a situation in which a Polish citizen is not able to obtain a Polish passport, identity card or personal identification number (PESEL).

The draft introduces a new institution to the law on civil records in the form of a certificate confirming the right to exercise the rights set forth in Article 21(1) of the Treaty on the Functioning of the European Union. Such a certificate is to be issued at the request of a person defined as a parent of a child in a foreign civil status record that is not subject to transcription for the reason that it is contrary to the public order clause. The certificate will confirm the rights of the persons indicated in this document as parents of a child to exercise the right to freely move and reside within the territory of the EU Member States. In this way, the draft aims to implement the standard arising from the judgment of the Court of Justice of the European Union of 14 December 2021 in *V.M.A. v. Stolichna obshtina, rayon "Pancharevo"*, C-490/20. In a similar case referred by the Polish court, the CJEU

⁹ Judgment of the Supreme Administrative Court of 16.02.2022, II OSK 128/19.

¹⁰ The draft is included in the list of legislative and programmatic works of the Council of Ministers under the number UD292.

stated that Articles 20 and 21 TFEU, read in conjunction with Articles 7 and 24 of the Charter and with Article 4(3) of Directive 2004/38, must be interpreted to mean that when a child who is a citizen of the Union and whose birth certificate issued by the competent authorities of one of the Member States indicates as his parents two persons of the same sex, the Member State of which that child is a citizen is obliged to issue that child with an identity card or a passport, without requiring the prior transfer by transcription of that child's birth certificate of that child's birth into the national civil registry. Further, such Member State is obliged to recognize a document originating from another Member State to allow the child to enjoy without hindrance, together with each of the aforementioned two persons, their rights to move and reside freely in the territory of the Member States.¹¹

Given the particularity of the certificate confirming the right to exercise the rights set forth in Article 21(1) of the Treaty on the Functioning of the European Union, the Ombudsman expressed doubts whether such a certificate will be effective and respected both in Poland and abroad.¹² For the Ombudsman, the need to request its issuance may already constitute an obstacle to realization of the right to freedom of movement and residence on the territory of the EU Member States. In its current version, the draft prevents a child born to a same-sex couple abroad from obtaining an identity document indicating the data of the two parents. According to the Ombudsman, the most effective way to implement these rulings would be to enter the data of both parents in the child's ID card while maintaining the evidentiary value of foreign birth certificates, which register events not recognized under Polish law.

The Ombudsman is also critical of the solution replacing the transcription of foreign records with the registration of the birth of a child because it means that two birth certificates - foreign and domestic - with different contents will function in the legal system. Also, other specific provisions in the draft put children born abroad to same-sex couples at a disadvantage compared to children born to opposite-sex couples.

Other court rulings favourable to the LGBTQI persons. On 22 June 2022, the District Court in Warsaw ruled that by publishing the "Invasion" defaming the LGBT community in Poland, the Polish Television violated the personal rights of a number of plaintiffs. The court awarded 35,000 PLN damages to social organizations working on behalf of LGBT people in Poland, in addition to damages to be paid to the plaintiffs. The court also ordered TVP to submit, at its own expense, a statement of apology for violating personal rights by publishing material in violation of the principles of journalistic diligence and integrity.

¹¹ CJEU order of 24.06.2022, C-2/21, ECLI:EU:C:2022:502.

¹² Ombudsman's opinion of 18.07.2022, XI.501.11.2022.AKB.

'Let's talk frankly about obesity'. The 3rd edition of the nationwide educational campaign entitled "Let's talk frankly about obesity" started in June 2022. The main goal of the undertaking is to build public awareness that obesity is a disease that should and must be treated. The organizer of the campaign is the Polish Association for the Treatment of Obesity, and on the webpage dedicated to the campaign you can find the nearest medical doctor dealing with obesity.¹³

1.2 Findings and methodology of research, studies, or surveys on experiences of discrimination against LGBTIQ people and on the grounds of socio-economic status, health status and physical appearance

ILGA-Europe Annual Report. In 2022, Poland ranked last for the third year in a row in terms of the socio-legal situation of people LGBTI among European Union Member States according to the ILGA-Europe annual report (for 2021).¹⁴

AI report. Amnesty International published a report documenting systemic violence directed against those working on behalf of the LGBTI community.¹⁵ The report analyses violations by authorities and law enforcement agencies in 2017-2021 in the context of freedom of assembly and freedom of expression, as well as individual cases of targeted judicial harassment and intimidation of activist individuals carrying out peaceful activities in support of LGBTI rights. It shows that the systemic oppression has reached a disturbing scale and it negatively affects the entire NGO sector in Poland. It often paralyzes civic action and forces activist(s) to withdraw from activism or leave the country after years of asserting their rights in the courts and smear campaigns aimed at them.

Note on the methodology: *"This report is the result of Amnesty International's research conducted between October 2021 and May 2022 across Poland. Researchers conducted 51 semi-structured interviews with 49 people, 44 of whom self-identified as LGBTI people and five as allies. The organization also interviewed the legal representatives of over 20 individuals that have been facing cases in court and more than 15 representatives of NGOs, journalists and experts on LGBTI rights in Poland. Amnesty International also held interviews with representatives*

¹³ <https://ootylosci.pl/>

¹⁴ ILGA-Europe, „Rainbow Europe Map and Index”, 22 maja 2022, <https://ilga-europe.org/report/rainbow-europe-2022/>

¹⁵ Amnesty International, *Byliśmy traktowani jak przestępcy. Od atmosfery wrogości po nękanie osób broniących praw LGBTI* (Warszawa 2022), https://amnesty.org.pl/wp-content/uploads/2022/07/Bylismy-traktowani-jak-przestepcy-raport-aktywisci_stki-LGBTI-Amnesty-International-2022.pdf

of Poland's Human Rights Commissioner's (Ombudsman's) Office and members of Parliament. Amnesty International also met with the Plenipotentiary for Human Rights of National Police of Poland. Additionally, the research team requested information from the municipal authorities of Dębica and Białystok. Representatives of the Ministry of Interior, the Headquarters of National Police and the Ministry of Justice were provided with an opportunity to respond to its main findings prior to publication, and the responses received are reflected in this report. Amnesty International observed four Equality Marches – in Bydgoszcz, Białystok and Płock in 2019 and in Białystok in 2021 – and four court hearings in proceedings against LGBTI activists charged with offending religious beliefs in Płock as well as one hearing of an activist charged with damaging a monument in Warsaw. Researchers also spoke to organizers and participants of the Equality Marches in Białystok, Częstochowa, Gniezno, Krakow, Lublin, Łódź, Nowy Sącz, Rzeszów, Tri-City, Poznań, and Warsaw. It also participated in the Congress of Equality Marches 2021 in Łódź in October 2021.” (AI Report, pp. 5-6)

Open for Business Report. The Open For Business Central and Eastern Europe¹⁶ estimates that the exclusion of the LGBT+ community costs Polish economy up to PLN 9.5 billion annually. The losses are caused by the migration of skilled workers to more tolerant countries.¹⁷

Note on the methodology: *The report takes into account various quantitative and qualitative methods: a literature review of key economic and issues related to the LGBT+ community in the region; analysis of economic data and other information related to the private sector and their correlation with the rights of LGBT+ persons in the region; interviews with regional leaders from the private sector who are working to expanding the inclusion of LGBT+ people in their countries; a survey with 190 executives from the human resources field in four countries (Hungary, Poland, Romania and Ukraine) covered in this report, conducted by Info Sapiens, based in Kiev, which is engaged in researching the market in terms of diversity and inclusion, and in particular the inclusion of LGBT+ persons (OfB Report, p. 6).*

However, the situation of the LGBTQI persons in some institutional contexts has slightly improved over years. As the 2022 report on the situation of LGBTQ persons studying in the University of Warsaw shows, the number of those who think that coming out may cause discomfort fell by half. The number of negative responses to this question also increased by several percentage points.¹⁸

¹⁶ Open For Business is an action-oriented coalition focused on challenging countries that produces high-impact research to drive the global conversation on LGBT+ inclusion. See more <https://open-for-business.org/about>

¹⁷ G. Perlov, Argumenty ekonomiczne przemawiające za inkluzją osób LGBT+ w Europie Środkowo-Wschodniej. Węgry, Polska, Rumunia i Ukraina (2022), <https://static1.squarespace.com/static/5bba53a8ab1a62771504d1dd/t/60887d09a5aae13d40d1a0bf/1619557645338/The+Economic+Case+for+LGBT%2B+Inclusion+in+CEE+-+POLISH.pdf>

¹⁸ Oddzielone, oddzieleni (Warszawa 2022), http://rownowazni.uw.edu.pl/wp-content/uploads/2022/05/Oddzielone-oddzieleni-raport-z-badania-2021_elektron.pdf

2 Racism, xenophobia and related intolerance

2.1 Data, research findings, studies, or surveys on experiences of ethnic discrimination, racism and hate crime

1. There is a significant gap in publicly available data on hate crimes: the General Prosecutor's Office declined a freedom of information request for an annual report on racially motivated hate crimes committed in Poland on the grounds of it being an internal document, even though similar documents were publicly available between 2015-2018.¹⁹ Also the Ministry of Internal Affairs and Administration declines a freedom of information request to disclose the data on hate crimes proceedings registered by the Police stations in line with the ODIHR methodology.²⁰

2. **Report on the implementation of the Roma Integration Programme 2021-2030 in 2021, Annex 2.**²¹ The report, while focusing on the implementation of the Roma integration programme, also contains data on decisions issued by courts in cases of crimes motivated by racial or religious hatred. According to the data, in 2021 there were 105 decisions in cases of violence or threats (88 convictions), 194 decisions in cases of insult or violation of personal integrity (137 convictions), 106 decisions in cases of public promotion of totalitarian regimes or incitement to hatred (89 convictions).

3. The anti-racism Association NEVER AGAIN (*NIGDY WIĘCEJ*) published a report "**Let's keep our solidarity with the refugees**".²² The report presents brief descriptions of 82 anti-Ukrainian incidents registered in the period of 24

¹⁹ The last time the report was made public was in 2018: National Prosecutor's Office (2018), Report on the investigations on racial, antisemitic and xenophobic hate crimes. *Wyciąg ze sprawozdania dot. spraw o przestępstwa popełnione z pobudek rasistowskich, antysemitowskich lub ksenofobicznych prowadzonych w 2017 roku w jednostkach organizacyjnych prokuratury*, June 2018.

²⁰ The complaint against Ministry's refusal to disclose data was filed by private individual and is pending at the Voivodeship Administrative Court in Warsaw (case no. II SAB/ Wa 160/22).

²¹ Poland, Ministry of Internal Affairs and Administration, Department of Religions and Ethnic and National Minorities (2022), Annex no 2 to the report on the implementation of the Roma integration programme 2021-2030 in 2021 (*Sprawozdanie za rok 2021 z realizacji Programu integracji społecznej i obywatelskiej Romów w Polsce na lata 2021-2030. Załącznik 2*), 5 August 2022.

²² Poland, Tatar A., Pankowski R. (ed.) (2022), *Zachowajmy solidarność z uchodźcami*, April 2022.

February – 31 April. The gravity of incidents ranges from hate speech to racially motivated violence.

4. **The Public Opinion Research Center's** report on Polish attitudes towards Ukrainian refugees researches monthly the opinion of Polish general public on Ukrainian refugees.²³ According to the research, 84 % of respondents had positive or highly positive attitudes towards receiving war refugees from Ukraine (compared to 94% in March 2022). The research was conducted with the use of a mixed mode survey (N= 1084, 62,1% CAPI, 23,4% – CATI and 14,5% – CAWI). The random sample was representative for adult population of Poland.

5. **The Helsinki Foundation for Human Rights** published a report analyzing hate speech in social media in the context of a humanitarian crisis at the Polish – Belarussian border and war in Ukraine.²⁴ According to the key findings of the report, the negative discourse around people crossing Belarussian – Polish border was a continuation of the 2015 “management by fear” technique introduced around the 2015 elections during the EU refugee crisis. The most common communication methods used were: negative stereotyping, incitement to hatred and violence, justification of rights` violations committed by the armed forces at the border. A new and more subtle method of dehumanisation was the use of a “hybrid war” narrative which made it possible to compare people crossing the border to “Lukashenka`s tools” or a “demographic weapon”. The negative narrative around Ukrainian refugees can be in large part attributed to the Russian trolls, however the topics raised are rooted in the anti-Ukrainian discourse present in Poland for years. The most common methods of communication used were: attributing radical anti-Polish nationalism to Ukrainian, and disinformation about the economic aspect of the migration from Ukraine.

2.2 Legal and policy developments or measures relating to the application of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive

a) The [Racial Equality Directive](#)

²³ Poland, The Public Opinion Research Center (2022), [Polacy wobec wojny na Ukrainie i ukraińskich uchodźców](#), 3 August 2022. A mixed mode survey (N= 1084, 62,1% CAPI, 23,4% – CATI and 14,5% – CAWI).

²⁴ Poland, Tymińska, A. (2022) [Granice nienawiści. Mowa nienawiści w kontekście kryzysów humanitarnych na granicy polskiej \(2021/2022\)](#), June 2022. The report analyses social media content with the use of a CounterHate tool.

There were no legislative developments in the reporting period.

Adoption of the National Equal Treatment Programme. The National Equal Treatment Programme 2022 – 2030 has been adopted by the Council of Ministers in May.²⁵

Addressing the issues of racism, xenophobia and related intolerance the Programme proposes to disseminate awareness-raising and teaching materials among teachers, organize joint workshops for schools with Police participation, establish an award for a good practice in combatting racism in sports, and organize trainings for the Police officers to improve the quality of support for victims of hate crimes. As pointed out by the Polish Ombudsman, 1) reliance on existing budgets of implementing actors and failure to secure additional resources, as well as 2) dependence of interventions on the results of the initial research instead of using the existing resources on discrimination, may turn out to be the weak points of the programme.²⁶

The development of the Programme was initiated in 2020 by the Government Equal Treatment Plenipotentiary. In August 2020 the Plenipotentiary has launched an online form where anybody could anonymously submit their ideas on what initiatives should be included in the Plan²⁷. The draft document of the Plan was made public online on the 24th November with the deadline for stakeholders to submit their comments by the 8th December. The launch of the draft Plan was only announced via Twitter accounts of the Minister of Labour and the Government Plenipotentiary for Equal Treatment and not disseminated among the civil society stakeholders. Second round of civil society consultations took place in November 2021²⁸, but the information was disseminated to neither to civil society actors nor to the Ombudsman, which was also raised by the latter in his correspondence with the Plenipotentiary²⁹.

The body responsible for the implementation of the Programme – the Government Plenipotentiary for Equal Treatment – has not responded to the freedom of information request as to which tasks under the Programme have been initiated in 2022, neither do the website of the Plenipotentiary or the social media channels provide information on this topic. Based on the annual activity report for 2021,

²⁵ Poland, the National Equal Treatment Programme 2022-2030 ([Krajowy Program Działań na Rzecz Równego Traktowania 2022-2030](#)), May 2022.

²⁶ Poland, Commissioner for Human Rights (2022), [A letter to the Government Plenipotentiary for Equal Treatment concerning the Equal Treatment Programme 2022-2030](#), 10 January 2022.

²⁷ Currently no online trace of any round of consultations can be found on the Plenipotentiary's website.

²⁸ Poland, Government Plenipotentiary for Equal Treatment (2022), [A letter to the Ombudsman concerning the Equal Treatment Programme 2022-2030](#), 5 August 2022.

²⁹ Ibidem.

the Plenipotentiary did not undertake interventions, projects or any other activity aimed at prevention or eliminating racial or ethnic discrimination in 2021.³⁰

According to the Office of the Plenipotentiary, the implementation of the Programme, as of the end of October 2022, remained at the initial stage, with the Office`s staff focusing mainly on employing new staff members and reminding other government departments of their responsibilities deriving from the Programme. The monitoring team (whose task will be to monitor the implementation of the Programme on the ongoing basis) was not yet appointed.³¹

b) The [Framework Decision on Racism and Xenophobia](#)

Draft amendments to the Criminal Code. The Parliament is proceeding a draft law amending the Polish Criminal Code as regards the guidelines for sentencing in presence of particularly aggravating circumstances.³² The amended article 53 of the Criminal Code, should it enter into force, would oblige judges to consider i.a. motivation based on national, ethnic, racial, political or religious hatred as an aggravating circumstance impacting the sentence, every time such a motivation is proven, disregard of the type of the crime committed. The amendment however will not impact the statutory limitations of the sentence that are foreseen for each crime. The rationale behind the amendment, as explained in the justification of the proposed legislation,³³ is to define more precisely the aggravating circumstances of the crime, thus inducing deeper consideration of their impact on the judgement and making it obligatory to explain said impact in the judgement. It should also contribute to enhanced transparency and intelligibility of judgements in the eyes of public opinion. The law was adopted by the Parliament on 16 November 2022 and subsequently signed by the President. The new provisions will enter into force on the 14 March 2023.³⁴

³⁰ Poland, Government Plenipotentiary for Equal Treatment (2022), [Sprawozdanie z działalności Pełnomocnika Rządu do Spraw Równego Traktowania za okres od 1 stycznia do 31 grudnia 2021 roku](#), 2022

³¹ Poland, A letter from the Office of the Government Plenipotentiary for Equal Treatment in response to the freedom of information request by the Association for Legal Information (not published), 26 October 2022.

³² Poland, A government`s proposal of a draft law amending the criminal code and other laws ([Rządowy projekt ustawy o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#)), print no 2024. The law was rejected by the Senate and is currently back in the Lower Chamber of Parliament (Sejm).

³³ Poland, Polish Government (2022), A government`s proposal of a draft law amending the criminal code and other laws. Justification ([Rządowy projekt ustawy o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw. Uzasadnienie.](#)), 2 February 2022.

³⁴ Poland, [Ustawa z dnia 7 lipca 2022 r. o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#), Journal of Laws from 2022, Item 2600, 13 December 2022.

National strategies targeting hate crimes. There are no comprehensive national strategies aimed specifically at prevention and combatting hate crimes in place. The Police developed a plan of Police activities for 2022-2025 aimed at prevention of hate speech and hate crimes, however its details were not made public.³⁵ In line with the plan, coordinators whose tasks are to plan and implement preventive actions in the areas of hate speech, hate crimes and promotion of totalitarian regimes were already assigned in each provincial Police headquarters (*komenda wojewódzka Policji*).³⁶ The initiatives should be *i.a.* education visits in schools and cooperation with minorities, public institutions and non-governmental organizations.

Anti-Ukrainian rhetorics. The nationalist Confederation party (with 11 MPs in the current Parliament), has been forcing its anti-Ukrainian rhetoric about the “ukrainisation” of Poland since the outbreak of the war. The tools used to promote the rhetoric include *i.a.* anti-Ukrainian brochures, social media posts, press conferences and public demonstrations.³⁷

Racial profiling at the Polish – Ukrainian border. There are no official reports confirming that racial profiling took place at the Polish- Ukrainian border in the first months following the outbreak of the war in Ukraine. It has been however confirmed by the Polish Ombudsman that the third country nationals who fled Ukraine were subjected to longer border procedures than Ukrainian citizens. The practice was justified by the fact that non_Ukrainian refugees didn't have proper documentation, which required introduction of the “second-line” checks. It is worth mentioning though, that as a result the third country nationals were kept at the border for many hours in substandard conditions.³⁸

³⁵ The freedom of information request was declined on 3 October 2022 on the grounds of the document being created „for internal use only”.

³⁶ Poland, Government Plenipotentiary for the Refugees from Ukraine (2022), [Letter of the Government Plenipotentiary for the Refugees from addressing the issue of the most vulnerable refugees](#), 12 July 2022.

³⁷ [A video material from the public demonstration „ Stop ukrainisation of Poland” in Szczecin](#), 7 October 2022. Mierzyńska.A., [Poseł Braun wykorzystuje Sejm, by nakrecać antyukraińskie nastroje. To spodoba się w Rosji](#), Oko.press (online media outlet), 19 July 2022.

³⁸ Poland, Commissioner for Human Rights (2022), Summary of visits of the Office of Commissioner for Human Rights at the Polish Ukrainian border stations ([Wizyty przedstawicieli BRPO na granicy polsko-ukraińskiej](#)) 27 February 2022.

3 Roma equality and inclusion

3.1 Policy developments in regards to the implementation of national action plans

Development regarding the implementation of the action plans	
Has the Member State adopted one or several action plan(s) for the implementation of the strategy (separately from the strategic framework? If yes, please provide a hyperlink	Yes/ <u>No</u> /Other (please specify) The National Strategy is the Roma Social and Civic Integration Programme 2021-2030: https://www.gov.pl/attachment/f1b1b409-908c-454f-b4fa-f011b3e4086d There is no Action Plan.
How were Roma and Traveller civil society organizations consulted for the development of the action plan (please check with the competent national authorities and the most significant Roma organizations)?	-
Was the Equality Body and the NHRI and the Ombuds institution in your country consulted in the development of the action plan (please check with the competent national authority, the Equality body, NHRI and Ombuds institution)?	-
Does the national strategic framework and the action plan foresee a regular monitoring and review? If yes, who will conduct this.	Yes/ <u>No</u> / <u>Other</u> (please specify) The National Strategy (Roma Social and Civic Integration Programme 2021-2030) does foresee a mechanism of regular monitoring and review, which lies within the Ministry of Internal Affairs and Administration.

	<p>The implementation report covering 2021 was published in August.³⁹ Even though the authors of the report are of a general opinion that <i>the effects of the implementation should be assessed positively</i>,⁴⁰ it is worth noting that the majority of annual average indicators were not reached, with the number of Roma education assistant employed in schools (-6%) and the number of beneficiaries of safety education (1%) being the lowest. The reason for the low success rate are, according to the authors, <i>the impact of COVID-19 and the slower dynamics of the programme itself compared to its previous editions</i>.⁴¹ The two indicators which were met as originally planned were: the number of Roma children who applied for secondary education scholarships (114%) and the number of Roma who benefitted from the housing support (111%). Additionally, only 28% of the funding was distributed to Roma organizations, the other implementers being municipalities and civil society organizations.⁴²</p>
Implications of the war in Ukraine on the situation of Roma	
Have Roma from Ukraine entered your country?	<u>Yes/No</u>
If Roma from Ukraine entered your country how was this communicated in the media?	<u>Yes/No</u> Entering of Roma from Ukraine was not reported in the first weeks of the war in media outlets. However starting mid-March, media (with

³⁹ Poland, Ministry of Internal Affairs and Administration, Department of Religions and Ethnic and National Minorities (2022), Report on the implementation of the Roma integration programme 2021-2030 in 2021 ([Sprawozdanie za rok 2021 z realizacji Programu integracji społecznej i obywatelskiej Romów w Polsce na lata 2021-2030](#)), 5 August 2022.

⁴⁰ Ibidem, p. 37.

⁴¹ Ibidem, p. 37.

⁴² Ibidem, p. 4.

	<p>the exception of pro-government outlets) reported discrimination of Roma refugees in reception centers and at train stations.⁴³</p> <p>These news appeared regularly in the media up until late July. The pro-government media did not cover the arrival of Roma community at all.</p> <p>Currently the issue once again gains more traction as a result of the Amnesty International Poland campaign and petition aimed at bringing attention of policy makers and public opinion to an unequal treatment of Roma refugees.⁴⁴</p> <p>Ukrainian Roma soldiers were mentioned by the Polish President Andrzej Duda in his tweet on the 27th of February, where he reported that Ukrainian Roma <i>stole the Russian tank</i>. The President was criticised by the Polish Roma organizations for perpetuating harmful stereotypes about Roma people being thieves, while taking over military equipment during war does not constitute stealing.⁴⁵</p>
<p>Is there any evidence (articles, reports, analyses) of the impact of the economic implications of the war (inflation, food or energy prices etc.) on Roma? If yes, provide reference</p>	<p>Yes/<u>No</u></p>

⁴³ Poland, Smoleński P., Volunteers push away Ukrainian Roma refugees. 'They will trade food like frying pans' ([Wolontariusze odganiają ukraińskich Romów. "Bo będą jedzeniem i ubraniami handlować jak patelniami"](#)), Wyborcza.pl, 29 March 2022. Mikulska A., Roma from Ukraine treated like second-class refugees. 'What we hear is: these people are not welcome' ([Romowie z Ukrainy traktowani jak uchodźcy drugiej kategorii. „Słyszymy: tych ludzi nie przyjmujemy”](#)), Oko.press, 1 April 2022. Kołodziejczyk M., Gypsies are not welcome? Ukrainians, Roma, second-class refugees ([Cyganów nie bierzemy? Ukraińscy Romowie, uchodźcy gorszego sortu](#)), Polityka, 24 April 2022. Pawlicka A., Roma fleeing war go to the lowest circle of refugee hell ([Romowie uciekający przed wojną trafiają do najniższego kręgu uchodźczego piekła](#)), Newsweek Poland, 18 March 2022.

⁴⁴ Poland, Amnesty International Poland (2022), Stop discriminating against Roma refugees ([Stop dyskryminacji romskich uchodźców](#)), September 2022.

⁴⁵ Poland, Polish Roma Association (2022), Statement of the Polish Roma Association of 28 February 2022 on the spectacular participation of the Ukrainian soldiers of Roma origin in the defense of Ukraine ([Oświadczenie z dnia 28 lutego 2022 r. Stowarzyszenia Romów w Polsce w sprawie spektakularnego udziału obywateli ukraińskich pochodzenia romskiego w wojnie obronnej Ukrainy](#)), 28 February 2022.

3.2 Legal and policy developments or measures directly or indirectly addressing Roma/Travellers equality and inclusion

Discrimination of Roma refugees fleeing Ukraine. There were no legal developments directly addressing equality and inclusion of Polish Roma communities. Roma refugees fleeing Ukraine were covered by the national law implementing Directive 2001/55/EC⁴⁶, as long as they were able to prove their Ukrainian citizenship. The law provides for access to the labour market (upon prior online registration by the employer) and social benefits and healthcare equal to those of Polish citizens.

While the provisions provide for equal reception conditions to all citizens of Ukraine and disregard their ethnic background, in practice Roma communities fleeing war are discriminated against. While no comprehensive report has yet been published, numerous media outlets⁴⁷ reported hostile attitudes of volunteers, unequal treatment and harassment of Roma refugees in reception centers and as regards access to other services, as well as cases of organizing transportation to other EU countries without the informed consent of refugees. The issue was also raised by the Polish Ombudsman in his letter to the Government Plenipotentiary for the Refugees from Ukraine.⁴⁸ According to the Ombudsman, his office received numerous complaints from

⁴⁶ Poland, [Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa](#), Journal of Laws from 2022, Item 583, 12 March 2022.

⁴⁷ Poland, Smoleński P., Volunteers push away Ukrainian Roma refugees. 'They will trade food like frying pans' ([Wolontariusze odganiają ukraińskich Romów. "Bo będą jedzeniem i ubraniami handlować jak patelniami"](#)), Wyborcza.pl, 29 March 2022. Mikulska A., Roma from Ukraine treated like second-class refugees. 'What we hear is: these people are not welcome' ([Romowie z Ukrainy traktowani jak uchodźcy drugiej kategorii. „Słyszymy: tych ludzi nie przyjmujemy”](#)), Oko.press, 1 April 2022. Kołodziejczyk M., Gypsies are not welcome? Ukrainians, Roma, second-class refugees ([Cyganów nie bierzemy? Ukraińscy Romowie, uchodźcy gorszego sortu](#)), Polityka, 24 April 2022. Pawlicka A., Roma fleeing war go to the lowest circle of refugee hell ([Romowie uciekający przed wojną trafiają do najniższego kręgu uchodźczego piekła](#)), Newsweek Poland, 18 March 2022.

⁴⁸ Poland, Polish Human Rights Commissioner (2022), [Letter of the Polish Human Rights Commissioner addressing the issue of the most vulnerable refugees](#), 8 April 2022.

the activists supporting Roma refugees about their mistreatment in reception services. In response, the Polish government assured,⁴⁹ that additional measures had been undertaken to strengthen the protection of Roma refugees, in particular initiation of close cooperation between regional national and ethnic minorities plenipotentiaries (*pełnomocnik wojewody ds. mniejszości etnicznych i narodowych*) and Roma organisations; and preparing Roma education assistants for the reception of additional students from Ukraine. Also in its campaign launched in October the Amnesty International Poland quotes testimonies by witnesses, aid workers and refugees themselves collected during a 2-months long monitoring of the reception conditions of Roma refugees.⁵⁰ The testimonies confirm numerous incidents rooted in anti-Roma prejudice.

Roma integration strategy. The Roma Integration Programme 2021-2030 entered into its second year of implementation in January 2022. Along with the official annual monitoring report issued by the Ministry of Interior and Administration (see 3.1), a civil society monitoring report was published, summarising the assessment of the quality of the Polish national strategy. The authors of the report prepared by the Jaw Dikh Foundation in cooperation with The Central Council of Roma in Poland and researchers based in Poland⁵¹, argue that programme does not meet the standards of both the Council Recommendations and the EU Roma Strategic Framework. The areas not covered (fully or partially) by the programme are health and employment. Also antygypsism is not addressed and deemed irrelevant. The major weakness of the programme was however, according to the report, the fact that *it seeks to explain Roma 'marginalisation' as a result of 'Roma culture'*⁵² and attempts to address the above with encouraging more efforts from the Roma communities to better integrate with the Polish society.

Dire housing conditions in Roma settlements. Despite the improvements in the housing situation of many Roma (e.g. 553 beneficiaries of housing support in 2021⁵³), some communities continue to live in dire conditions. The situation in the Maszkowice settlement (60 Roma families) deteriorates. The fire which erupted in January contributed to the conditions of the buildings becoming gradually uninhabitable. The local administration's efforts towards reaching a sustainable solution of

⁴⁹ Poland, Government Plenipotentiary for the Refugees from Ukraine (2022), [Letter of the Government Plenipotentiary for the Refugees from addressing the issue of the most vulnerable refugees](#), 12 July 2022.

⁵⁰ Poland, Amnesty International Poland (2022), Stop discriminating against Roma refugees ([Stop dyskryminacji romskich uchodźców](#)), September 2022.

⁵¹ European Union, Jaw Dikh Foundation (2022), [Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Poland](#), April 2022.

⁵² Ibidem, p. 29

⁵³ Ibidem, p. 28.

the problem of inhumane living conditions of Roma community in Maszkowice were questioned numerous times in the past by the Polish Ombudsman and Polish Roma organizations. In 2022 The situation became a subject of the intervention of the Ombudsman in April⁵⁴ as well as an open letter of the Polish Roma Association in July.⁵⁵

⁵⁴ Poland, Commissioner for Human Rights (2022) , [Ex-officio intervention concerning the situation in the Maszkowice settlement, https://bip.brpo.gov.pl/sites/default/files/2022-04/Do_Wojta_13_04.2022.pdf](https://bip.brpo.gov.pl/sites/default/files/2022-04/Do_Wojta_13_04.2022.pdf)

⁵⁵ Poland, Polish Roma Association (2022), [Statement by the Polish Roma Association of 21 July 2022 responding to the statement of the Mayor of Łącko regarding social support rendered to the residents of the Roma settlement in Maszkowice](#), 21 July 2022.

4 Asylum, borders, visas, migration and integration

4.1 National legal framework on criminalisation of 'humanitarian assistance' and domestic transposition of sanctions

EUMS	Implementation of Article 3 of Directive 2002/90/EC	
	How has your EUMS implemented Article 3 of Directive 2002/90/EU	Hyperlinked legal provision in EN and national language In Poland, the provisions penalizing the promotion and organization of illegal migration are included in the Penal Code (Ustawa z dnia 6 czerwca 1997 r. Kodeks karny). Art. 264(3): Whoever organises the crossing of the border of the Republic of Poland for other persons, in violation of the relevant regulations shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years (<i>Kto organizuje innym osobom przekraczanie wbrew przepisom granicy Rzeczypospolitej Polskiej, podlega karze pozbawienia wolności od 6 miesięcy do lat 8</i>). Art. 264a(1): Whoever, in order to gain financial or personal benefits, allows or facilitates another person to stay on the territory of the Republic of Poland in violation of the provisions, shall be subject to the penalty of deprivation of liberty for a term of between 3 months to 5 years (<i>Kto, w celu osiągnięcia korzyści majątkowej lub osobistej, umożliwiał lub ułatwiał</i>

		<p><i>innej osobie pobyt na terytorium Rzeczypospolitej Polskiej wbrew przepisom, podlega karze pozbawienia wolności od 3 miesięcy do lat 5).</i></p> <p>There is also Art. 49a of the Code of Petty Offences (Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń) which penalizes the illegal crossing of the Polish border. §2 of this provision also penalizes attempting and abetting.</p> <p>Article 264 of the Penal Code has existed in the Code since its first version in 1997 – the adoption of the Directive, however, resulted in an increase in criminal liability. Article 264a of the Penal Code and article 49a of the Code of Petty Offences were introduced as an implementation of the Directive.</p>
	Cases [incident numbers] of criminalisation of humanitarian assistance	
	<p>Number of cases recorded by the police in 2022</p>	<p>Number and details of cases (if available)</p> <p>The criminalization of humanitarian aid in Poland at the end of 2021 and 2022 concerned the crisis on the Polish-Belarusian border. It took two forms. The first was the accusation of people providing humanitarian aid to migrants of organizing or assisting in illegal border crossings. In addition, an emergency zone has been established in the border area (the region known as Podlasie). Almost only residents registered in its territory had access to it. The second form of criminalization was, therefore, punishing people who provided humanitarian aid or documented the crisis (journalists) for illegal entry into the zone.</p> <p>At least 18 cases including:</p> <p>A. 9 cases of people providing humanitarian help to migrants on the Polish-Belarusian border who have been charged with organizing illegal border</p>

		<p>crossing or aiding in this act (art. 264 § 3 of the Polish Penal Code), including:</p> <p>1) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 338/22: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>2) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 339/22: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>3) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 340/22: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>4) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 341/22: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>5) Circuit Court in Białystok (Sąd Okręgowy w Białymstoku) – VIII Kz 348/22: upholding the decision of the District Court in Sokółka refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>6-7) District Prosecutor’s Office of Bielsk Podlaski (Prokuratura Rejonowa w Białymstoku) - 4004-0 Ds.587.2021.</p> <p>B. 1 case of person providing humanitarian help to migrants on the Polish-Belarusian border who has been charged with providing assistance in illegal border crossing (art. 49a § 2 of the Polish Code of Petty Offences) –</p>
--	--	---

		<p>ended with an acquittal [District Court in Bielsk Podlaski (Sąd Rejonowy w Bielsku Podlaskim) – VIIIW 58/22];</p> <p>C. 4 cases of people providing humanitarian help to migrants on the Polish-Belarusian border who refused to accept a fine for entering the emergency zone in Podlasie, including:</p> <p>1) District Court in Białystok – XIII W 1522/22, penal order of November 10, 2022 - the defendants raised objections;</p> <p>2) District Court in Sokółka - II W 182/22, penal order of April 20, 2022 – the defendants’ objections followed, however, in the end the case has been repealed due to the abolition of the emergency zone.</p> <p>3) District Court in Sokółka - II W 214/22, penal order of July 13, 2022 – the defendants’ objections followed, however, in the end the case has been repealed due to the abolition of the emergency zone.</p> <p>D. 1 case of person providing humanitarian help to migrants on the Polish-Belarusian border who has been charged with facilitating the stay in Poland for persons who do not have the right to lawful residence in the territory of the Republic of Poland (art. 264a of the Polish Penal Code) – case number and current status are unknown, the case has only been mentioned on the social media;</p> <p>E. 3 joint cases of journalists detained and punished for entering the emergency zone in Podlasie - as a consequence acquitted by the Supreme Court of Poland – Supreme Court (I KK 171/21), judgement of January 18, 2022;</p>
--	--	--

		<p>F. 5 cases of journalists detained for entering the emergency zone in Podlasie, including:</p> <p>1) District Court in Sokółka – II Ko 1905/21 – the current status is unknown.</p> <p>2) District Court in Bielsk Podlaski - VII Kp 336/21 of October 24, 2022 - the current status is unknown.</p> <p>Furthermore, another way to criminalize humanitarian aid was to punish assistants with fines for entering the emergency zone in Podlasie. However, it is impossible to determine their number, because the fines awarded for entering the zone applied not only to humanitarian aid providers, but also to many other cases.</p>
	<p>Number of investigations initiated in 2022</p>	<p>Number and details of cases (if available)</p> <p>At least 10 cases, including:</p> <ul style="list-style-type: none"> - 9 cases of people providing humanitarian help to migrants on the Polish-Belarusian border who have been charged with organizing illegal border crossing or aiding in this act, art. 264(3) of the Polish Penal Code – case numbers mentioned above; - 1 case of person providing humanitarian help to migrants on the Polish-Belarusian border who has been charged with facilitating the stay in Poland for persons who do not have the right to lawful residence in the territory of the Republic of Poland, art. 264a of the Polish Penal Code – the case number and current status is unknown, it has only been mentioned on the Border Guard's social media.

	<p>Number of court decisions taken in 2022</p>	<ul style="list-style-type: none"> • Number and type of court decisions, information if decision is final. • Type of penalties imposed according to Article 1 2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence • Describe in max three-four sentences the key court decisions in 2022 and add hyperlink to decision (if available) <p>There were at least 7 court decisions. However, none of them entailed the imposition of criminal sanctions on people. These decisions included:</p> <p>A. 5 cases of refusal to apply pre-trial detention to persons providing humanitarian aid to migrants who have been charged with organizing illegal border crossing or aiding in this act (Article 264(3) of the Polish Penal Code):</p> <p>- 4 cases in District Court of Bielsk Podlaski (Off-site Department in Hajnówka): all court decisions related to the same case, in which 5 people were arrested in connection with helping a family of Kurdish migrants (transport to a safe place). People were charged with organizing illegal border crossing (Article 264 § 3 of the Polish Penal Code) - one of them, an Italian citizen, was deported to the country of origin. The court dismissed the request of the Prosecutor's Office for pre-trial detention. In the justification of the decision, he also put forward a thesis on the merits of the case, stating that there was no crime in the case, but that it was necessary to help people in a crisis situation. The higher court upheld those decisions:</p>
--	---	--

		<p>1) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 338/22 of 13.04.2022: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>2) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 339/22 of 13.04.2022: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>3) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 340/22 of 13.04.2022: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>4) Circuit Court in Białystok (Sąd Okręgowy w Białystok) - VIII Kz 341/22 of 13.04.2022: upholding the decision of the District Court in Bielsk Podlaski refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>- 1 case in District Court of Sokółka: a similar case to those described above - an activist providing humanitarian aid (bringing material aid) was charged with organizing illegal border crossing (Article 264 § 3 of the Polish Penal Code). Also in this case, the District Court dismissed the application of the Public Prosecutor's Office, and the higher court upheld the decision – Circuit Court in Białystok (Sąd Okręgowy w Białymstoku) – VIII Kz 348/22 of 14.04.2022: upholding the decision of the District Court in Sokółka refusing to apply pre-trial detention. Criminal proceedings pending.</p> <p>B. 1 case in which the court found that the detention of humanitarian aid workers was unjustified, illegal and irregular (District Court in Biała Podlaska, II Kp 92/22 of March, 18, 2022):</p>
--	--	---

		<p>a person providing humanitarian aid was detained for 5 hours by Border Guard officers in connection with being in the emergency zone. In this case the court found that the detention of humanitarian aid workers was unjustified, illegal and irregular.</p> <p>C. 1 case in which a person providing humanitarian assistance to a migrant was acquitted of a charge of helping illegal border crossing (art. 49a § 2 of the Polish Code of Petty Offences) – (District Court in Bielsk Podlaski, VIIIW 58/22 of April, 6, 2022):</p> <p>a person providing humanitarian aid (transport to the hospital) was charged with providing assistance in illegal border crossing (art. 49a § 2 of the Polish Code of Petty Offences). The court refused to accept the request for punishment. The court pointed out that the activist’s motivation in this case was not to facilitate the crossing of the border, but to provide ad hoc assistance to a person who had already been on the territory of Poland.</p> <p>D. case of 3 journalists detained and punished for entering the emergency zone in Podlasie - as a consequence acquitted by the Supreme Court of Poland (Supreme Court (I KK 171/21), judgement of January 18, 2022)</p> <p>three journalists from the German-French television ARTE and the AFP agency were detained on September 28, 2022, in connection with the fact that they were staying in a town where a state of emergency was introduced. The district court found the journalists guilty of misconduct and reprimanded them. The judgment became final as the parties did not appeal. The Polish Ombudsman filed a cassation appeal to the Supreme Court. The Supreme Court accepted the cassation, recognizing the provisions on the state of emergency as leading to unconstitutional</p>
--	--	--

		violation of rights and freedoms - including limiting the protection of human dignity, protection of life or the obligation to treat humanely.
--	--	--

4.2 Use of the large-scale IT Systems in the area of asylum, migration and border control

As a member state of the European Union, Poland belongs to the EU's IT border control systems. It is known from official sources, including [the declaration of the Border Guard](#), that Poland is preparing to implement new, large-scale IT systems of the European Union: EES (Entry / Exit System) and ETIAS (European Travel Information Authorization System). Moreover, due to the humanitarian crisis on the Polish-Belarusian border and the migration from the territory of Ukraine caused by the war, Poland either introduced or announced the introduction of additional measures at the national level.

PESEL registration for Ukrainian citizens. Ukrainian citizens who fled their country after February 24, 2022 due to the ongoing war, must register and obtain a PESEL number in order to obtain protection in Poland (art. 4 of [the Act on assistance to Ukrainian citizens in connection with an armed conflict in the territory of that state](#), further: the Special Act). Registration also includes taking fingerprints and submitting a biometric photo. The PESEL number belongs to the general Polish electronic population registration system. The system collect basic personal data, as well as information regarding, for example, marital status or place of residence ([Act on Registration of Population](#)). Ukrainian citizens who benefit from the protection provided for by the Special Act receive a PESEL number with the letters UA at the beginning. Their data is collected in a special register kept by the Commander-in-Chief of the Border Guard, which collects personal data and information on the date of entry into the territory of Poland, the date of submission of the application, or the date of possible departure from Poland (art. 3 of the Special Act).

Fulfilling the registration obligation has been associated with - and in some cases still is - with various difficulties. For example, in the first version of the Special Act, an application for a PESEL number could only be submitted to the office in person, which caused problems, for example, for some people with disabilities or the elderly. Therefore, [at the request of, inter alia, non-](#)

[governmental organizations](#), para. 2 Art. 4 of the Special Act, the following sentence has been added: In the case of a person who, due to his health or disability, is unable to submit the application in person at the seat of the commune body, the commune body provides the possibility of submitting the application at the place of his / her stay. In the course of providing legal advice, HFHR also learned of other registration problems. Currently, disturbing news from other organizations providing help to the Ukrainian refugees comes from the reception center near Warsaw in the PTAK center in Nadarzyn. Since public transport between PTAK and the center of Warsaw is not working, people who do not have a car or funds to order a taxi cannot register in the Ukrainian PESEL database.

Register of unaccompanied minors. Art. 25a of the Special Act also provides for the creation of an IT system intended for the registration of unaccompanied minors from Ukraine and their temporary guardians in Poland. It is run by the Ministry of Family and Social Policy together with poviats family support centers. From the data obtained as part of the application for access to public information, that the system has already been launched and minors are systematically registered. The purpose of the system is to provide children with a higher level of protection and care. Representatives of Polish NGOs dealing with children's rights, with whom the HFHR spoke, expressed concern that the register collects data on guardians rather than on minors. Another problem is that the register covers only minors who have Ukrainian citizenship, and not, for example, third-country nationals.

Planned surveillance system on the wall on the Polish-Belarusian border. In 2022, the construction of a dam (wall) on the Polish-Belarusian border began - on the terms specified in [the Act on the construction of state border protection](#). Construction work on the physical part of the dam was completed on June 30, 2022. Construction work on the physical part of the dam was completed on June 30, 2022, when [an official press conference of the government and the Border Guard](#) took place. The completion of the construction [was announced](#) again on October 1, 2022 by the government plenipotentiary for the security of the information space of the Republic of Poland. He informed also that the stage of assembling "perimetry" has begun - surveillance system consisting of composed of cameras, sensors and possibly an IT system (the Act defines these issues very generally in art. 2). The details of these investments are not known, and the law provides that they do not constitute public information (art. 7) - which raises concerns as to whether the introduced system will not support further human rights violations that occur on the Polish-Belarusian border (cf. reports: [Amnesty International](#), [Human Rights Watch](#), [HFHR](#)).

5 Information society, privacy and data protection

5.1 Initiatives in the use of artificial intelligence in both private and public sectors

Actor	Type	Description	Are Human Rights issues mentioned? (yes/no)	Reference
Business	Opinion	<p><u>Statement of the Association of Entrepreneurs and Employers.</u></p> <p>This statement represents the position of the Association of Entrepreneurs and Employers on the draft AI Regulation. The Association supports the need to regulate the use of artificial intelligence in EU, but in its opinion, the obligations imposed by the draft AI Regulation are largely impracticable and disproportionate.</p> <p>Particular attention was paid to the proposed definition of artificial intelligence - in the</p>	No	<p>Polish Association of Entrepreneurs and Employers (<i>Polski Związek Przedsiębiorców i Pracodawców</i>), 2022, Opinion of the AI Draft Regulation, (https://zpp.net.pl/wp-content/uploads/2022/05/05.2022-Opinia-Glownego-Experta-ZPP-ds.-Gospodarki-Cyfrowej-ws.-Aktu-o-sztucznej-inteligencji-1.pdf).</p>

		opinion of the Association, this definition may aggravate the legal stability and discourage entrepreneurs from investing in AI across the EU.		
Government	Report	<p><u>Report prepared at the request of the KPRM Cyfryzacja (Special unit of the Chancellery of the Prime Minister established in place of the former Ministry of Digitization)</u></p> <p>The report is a summary of a series of workshops in which representatives of various industries discussed the concepts of data sharing and spaces of the exchange of digital data. The authors' attention was focused primarily on the issues related to the agricultural and medical sectors.</p>	No	<p>KPRM Digitization (<i>Cyfryzacja KPRM</i>), 2022, Uwolnić potencjał danych. Zarządzanie danymi jako zasobem współdzielonym. https://www.gov.pl/attachm ent/f3f609c0-b63e-48ca-9dff-e355c0ce75ab</p>

		The report also contains recommendations regarding the implementation of the "Policy for the development of AI in Poland from 2020." in the area of data access management.		
Other	Other	<p><u>Document containing self-regulation of the use of AI in the practice of medical facilities, created by the Association of entities engaged in the medical industry, i.e. hospitals, medical universities and pharmaceutical companies).</u></p> <p>The purpose of the document, called the "White Book of AI in Clinical Practice", is to identify the most important questions and doubts that arise in the everyday practice of using AI in clinical practice. The document describes the possibilities of using AI in</p>	No	The AI in Health Coalition (<i>Koalicja AI w Zdrowiu</i>), 2022, Biała Księga AI w Zdrowiu, https://icm.edu.pl/wp-content/uploads/2021/06/BI_A_A-KSIEGA_AI-W-ZDROWIU_2022.pdf

		<p>medicine, whether its use in health care is legally permissible, how artificial intelligence can support a medical professional and patient, and what is the public policy regarding the development of artificial intelligence in health care. The authors of the document also paid a lot of attention to the rights of the patient.</p>		
Other	Other	<p><u>IDEAS NCBR is a limited liability company established by the National Center for Research and Development, established in order to deal with artificial intelligence and digital economy matters.</u></p> <p>The main goal of the IDEAS NCBR is to build the largest innovative platform in Poland, as well as educating a new generation of scientists focused on the</p>	No	<p>Ideas NCBR sp. z o.o., official website of the entity: https://ideas-ncbr.pl/en/</p>

		<p>practical application of the developed algorithms and their subsequent commercialization in industry, finance, medicine and other branches of the economy. As emphasized by its authorities, the institute intends to increase the research and development potential in the field of artificial intelligence.</p>		
Civil Society Organisation	Report	<p>The report was prepared by the AI Law Tech Foundation. The Foundation is a think-tank which is focused on technical, legal, ethical and business aspects of new technologies; it focuses especially on issues related to AI and cybersecurity.</p> <p>The report is a comprehensive analysis of the draft AI Regulation – it was prepared by Polish specialists in the field of law</p>	<p>Yes</p> <p>According to the report, the draft AI Regulation should refer to the currently applicable documents and standards related to the human rights issues, prepared both by the EU and the Council of Europe. However, as pointed out in the report, the draft AI Regulation does not contain direct references to ethical principles, the detailed solutions of the Draft may prove that these principles have been followed.</p>	<p>AI Law Tech Foundation (<i>Fundacja AI Law Tech</i>), 2021, Analysis of certain aspects of the draft AI Regulation (<i>Analiza wybranych aspektów projektu aktu w sprawie sztucznej inteligencji</i>), December 2021.</p>

		<p>and new technologies. As indicated by the authors, it supposed to be a significant support for experts and advisers working on the draft AI Regulation.</p> <p>The report was financed by the European Conservatives and Reformists.</p>		
Academia, Government	Other	<p>The main goal of the projected ANSI system is to use the AI in order to eliminate dual quality products from the Polish market. ANSI shall identify consumers' opinions on products' safety and quality, taking into account the issue of its dual quality. The system will be used to identify the quality of products on the basis of the reviews published online by multilingual consumers. After that, those reviews will be analysed and used in</p>	No	<p>ANSI system - AI detecting dual quality products (<u>System ANSI - sztuczna inteligencja w wykrywaniu podwójnej jakości produktów</u>), November 2022.</p>

		<p>order create recommendations, if certain products shall be given for laboratory verification.</p> <p>Dual quality products are defined as products which due to some significant changes in their properties have lower quality than the same products offered in another EU countries. The problem of double quality concerns, inter alia, the food industry - producers introduces to the certain countries the same food with worse composition. This practice unfairly varies the situation of consumers from different countries and leads to unjustified discrimination.</p> <p>The system was designed by the Center of Processing Information of the National Research Institute (Ośrodek Przetwarzania Informacji</p>		
--	--	---	--	--

		<p>Państwowego Instytutu Badawczego) and the Institute of Computer Science of the Polish Academy of Sciences (Instytut Podstaw Informatyki Polskiej Akademii Nauk). The project is financed by the National Research and Development Centre (Narodowe Centrum Badań i Rozwoju). The system should be finished and deployed for use by 2025 at the latest.</p>		
Business	Opinion	<p>Statement of the Digital Poland – the Association of Importers and Producers of Electrical and Electronic Equipment.</p> <p>According to the statement, the idea of regulation of technology based on AI corresponds with the postulates of the Association expressed in recent years.</p>	No	<p>The Digital Poland – the Association of Importers and Producers of Electrical and Electronic Equipment (<i>Cyfrowa Polska - Związek Importerów i Producentów Sprzętu Elektrycznego i Elektronicznego</i>), 2022, Position for the draft AI Regulation (Stanowisko ws.</p>

		However, certain aspects and definitions of the Draft should be expressed more clearly and transparent. Moreover, as highlighted by the authors, some of the requirements introduced in the Draft are not feasible.		Aktu o sztucznej inteligencji), February 2022.
Government	Other	The National Information Processing Institute (<i>Narodowy Ośrodek Przetwarzania Informacji</i>) is currently working on the system which is aimed at searching for prohibited clauses in contract templates used by entrepreneurs; this system is to be based on the AI. This system is being prepared on request of the Office of Competition and Consumer Protection (<i>Urząd Ochrony Konkurencji i Konsumentów</i>).	No	Office of Competition and Consumer Protection, 2021, AI detecting illegal clauses in agreements. (Sztuczna inteligencja pomoże wyszukiwać klauzule niedozwolone), September 2021.

		As recently announced, the system is to be completed in 2023.		
Government	Report	<p>The Group was established in order to create proper conditions for the use of artificial intelligence in the financial sector, taking into account the principle of proportionality.</p> <p>The report consists of:</p> <ul style="list-style-type: none"> - the analysis of the existing legal, regulatory and operational frameworks for the financial sector in the scope of the use of AI; - identification of possible barriers and gaps that may hinder the development of the AI; <p>recommendations regarding the implementation of</p>	No	<p>Governmental Working Group on the Artificial Intelligence, 2022, Recommendations for the use of the Artificial Intelligence in the financial industry, (Rekomendacje w zakresie sztucznej inteligencji w sektorze finansowym), October 2022.</p>

		policies for the development of artificial intelligence in the financial sector.		
Civil Society Organisation	Report	<p>The main objective of the report is to present good practices that are crucial for the implementation and maintenance of AI and automatic decision-making systems in the public sector.</p> <p>In particular, the report introduces recommendations regarding:</p> <ul style="list-style-type: none"> - the introduction of regulations concerning the use AI systems in public institutions; - training of the government officials in the field of AI; 	No	<p>My Country Foundation, 2022, Good standards in the management of the AI systems and automatic decision-making in the public sector, (<i><u>Dobre standardy w zarządzaniu systemami sztucznej inteligencji i automatycznego podejmowania decyzji w sektorze publicznym</u></i>), October 2022.</p>

		- informing of the citizens about the use AI by the public sector.		
--	--	--	--	--

5.2 Legal and policy initiatives on data protection and private life

Appointment of the Department for Combating Cybercrimes in the National Public Prosecutor's Office

By force of the Regulation of the Minister of Justice of July 29, 2022, a special unit called the Department for Cybercrime and Information Technology was established in the National Prosecutor's Office.⁵⁶

According to the regulation, the Department is responsible for:

- supervising and coordinating pre-trial proceedings in cases of serious crimes committed with the use of the Internet, advanced technologies and computer systems (cybercrime) conducted by subordinated procurature offices;
- collecting and analyzing materials related to cybercrimes, as well as developing current assessments of the trends and dynamics of those crimes;
- international cooperation in the field of strategies concerning cross-border cybercrimes;
- obtaining funds from national and European sources.

⁵⁶ Poland, [Regulation of the Ministry of Justice amending the regulation – Rules of internal operation of universal organizational units prosecutor's office](#) (*Rozporządzenie Ministra Sprawiedliwości zmieniające rozporządzenie – Regulamin wewnętrznego urzędowania powszechnych jednostek organizacyjnych prokuratury*), 29 July 2022.

Draft amendment to the Act on the National Cybersecurity⁵⁷

Legislative work on the Amendment on the Act on the National Cybersecurity have been underway since September 2020. On March 25, 2022, another version of the Amendment was published on the website of the Government Legislation Center (the previous 6 versions have not been implemented). This draft is a legislative initiative of the Ministry of Digital Affairs. As indicated by the authors in the legal justification of the Amendment, the current regulations require changes due to 'the growing number of threats in cyberspace and the increasingly important role of information systems in the life of society'.

The most important change in relation to the previous project is the inclusion of 'entrepreneurs of electronic communication' into the National Cybersecurity System. According to the current version of the draft, an electronic communication entrepreneur is not only an entrepreneur from the telecommunications industry (e.g. a telecommunication operators), but also all other entities providing a publicly available interpersonal communication service that does not use numbers (i.e. entities providing e-mail services, transmitting messages, as well as providing group chats or various types of instant messaging). This change is a significant extension of the scope of entities to which the provisions of the Act on the National Cybersecurity System will be applied. Moreover, according to the current version of the draft, all electronic communication entrepreneurs will be subject to the provisions of the Act, regardless of their size.

As a consequence, new obligations will be imposed on a number of new entities, such as:

- service of telecommunications incidents - a completely new category of incidents, including all events that have a real, negative effect on the security of electronic communication networks and services;
- reporting of serious telecommunications incidents within 24 hours to the new CSIRT Telco (Computer Security Incident Response Team), created especially for the telecommunications sector.

For failure to comply with abovementioned obligations, the entrepreneurs of electronic communication may face high penalties, which may amount up to 3% of the value of the entity's revenue for the previous calendar year.

⁵⁷ Poland, [Draft amendment to the Act on the National Cybersecurity System](#) (*Projekt ustawy o zmianie ustawy o krajowym systemie cyberbezpieczeństwa*), 15 March 2022.

As indicated by the Ministry of Digital Affairs, the project should be adopted by the Council of Ministers in the first or second quarter of 2023.

In October, 2022, another version of the Amendment has been published⁵⁸. This Amendment introduces controversial provisions concerning assessment of the risk profile of hardware and software producers. According to the Amendment, if such producer is considered as a high-risk supplier, obtaining supplies from him will be prohibited. Moreover, supplies purchased from such producer will have to be withdrawn from use within 7 years, and in special cases even within 5 years. The abovementioned assessment will be carried out by the Minister of Digital Affairs on the basis of the opinion of the governmental College for Cybersecurity.

The Amendment is strongly criticised, especially by the entrepreneurs. As highlighted by the Federation of Polish Entrepreneurs, the main problem of the amendments is the lack of public consultations.⁵⁹ It is emphasized that omitting public consultations may cost entrepreneurs billions of PLN. The Federation also pays attention to the above-mentioned mechanism of assessment, that allows any supplier to be considered as a high risk supplier - this mechanism may be found inconsistent with EU law and the Constitution. As a consequence, it is indicated that the proceeding on the amendment must be suspended until the implementation of the NIS 2 directive.

The Act on Special Principles for Remunerating of Cybersecurity Workers⁶⁰

On January 1st, 2022, The Act on Special Principles for Remunerating of Cybersecurity Workers entered into force. The purpose of this Act is to encourage cybersecurity specialists to work in the public sector. As indicated by the authors: 'Salaries offered in the private sector significantly exceed those offered by public institutions, which are limited by specific wage 'ranges'. This often results in an outflow of personnel from the public sector.'

⁵⁸ Poland, [Draft amendment to the Act on the National Cybersecurity System](#) (Projekt ustawy o zmianie ustawy o krajowym systemie cyberbezpieczeństwa), 5 October, 2022.

⁵⁹ Poland, [Press release of the Federation of Polish Entrepreneurs](#) (*Informacja prasowa Federacji Przedsiębiorców Polskich*), 9 November, 2022.

⁶⁰ Poland, [Act on Special Principles for Remunerating of Cybersecurity Workers](#) (*Ustawa o szczególnych zasadach wynagradzania osób realizujących zadania z zakresu cyberbezpieczeństwa*), 2 December 2021.

Implementing the Act, the Cybersecurity Fund was created, the funds from which are to be allocated, inter alia, for salaries for employees of the Computer Security Incident Response Team, ministries, as well as the Defense Intelligence Agency, the Chancellery of the Prime Minister and the police.

Appointment of the Central Anti-Cybercrime Bureau⁶¹

On 12 January 2022, the Act establishing the Central Anti-Cybercrime Bureau entered into force.⁶²

The Bureau is distinguished from other types of Police services by both the scope of the tasks performed, as well as the system of recruiting and training officers and the remuneration system. The Central Anti-Cybercrime Bureau is a nationwide organizational unit of the Police, the purpose of which is to support other Police units in identifying, preventing and combating cybercrimes. The Act provides for the creation of additional 1,800 jobs, which is to be done gradually, within 4 years from the entry into force of the Act. As part of the recruitment to the Bureau, tests related to the knowledge of the IT systems will be carried out; candidates will be exempt from the physical fitness test.

In order to ensure the observance of fundamental rights, the Bureau has nominated the Representative for the Protection of Human Rights. The Representative is responsible especially for:

- monitoring the activities of organizational units of the Bureau in terms of respecting human dignity;
- establishing and conducting cooperation with national and international entities dealing with the protection of human rights;
- initiating legal changes, issuing opinions on draft legal acts and developing internal procedures related to the protection of human rights;

⁶¹ Poland, official website of the Central Anti-Cybercrime Bureau, available in Polish at: <https://cbzc.policja.gov.pl/>.

⁶² Poland, [Act amending certain acts in connection with the establishment of the Central Anti-Cybercrime Bureau](#) (*Ustawa o o zmianie niektórych ustaw w związku z powołaniem Centralnego Biura Zwalczenia Cyberprzestępczości*), 17 December 2021.

promoting human rights, the principle of equal treatment and the principles of professional ethics in organizational units of the Bureau.

The act provides for the maximum limit of expenditure from the state budget for the establishment of Bureau in the amount of PLN 4.4 billion.

The draft of the Act on the protection of juveniles against access to inappropriate online content.⁶³

The main assumption of the Draft is to impose an obligation on the Internet providers to ensure the recipients with the possibility of the use of the service that restricts the access to pornographic content on the Internet. This service is meant to be free of charge. Before signing a contract with the Internet provider, the customer is to be informed about the possibility of the use of the above-mentioned mechanism. The draft also obliges the Internet providers to promote the use of solutions limiting access of minors to pornographic content on the Internet. The providers will have to prepare an annual report which will include, inter alia, description of technical and organizational measures used to provide the service of limiting access to pornographic content on the Internet.

Extraordinary Commission of the Senate - the PEGASUS investigation.⁶⁴

In January 2022, the Senate established an Extraordinary Commission to investigate cases of surveillance using the Pegasus system.

The commission has been established in order to:

⁶³ Poland, [The draft of the Act on the protection of minors against access to inappropriate online content](#) (Projekt ustawy o ochronie małoletnich przed dostępem do treści nieodpowiednich w internecie), 10 October, 2022.

⁶⁴ Poland, [Senate Extraordinary Committee for clarifying cases of illegal surveillance, its impact on the election process in the Republic of Poland and reforms of secret services](#) (Komisja Nadzwyczajna do spraw wyjaśnienia przypadków nielegalnej inwigilacji, ich wpływu na proces wyborczy w Rzeczypospolitej Polskiej oraz reformy służb specjalnych), January, 2022.

- 1) explain the disclosed cases of illegal surveillance with the use of, inter alia, "Pegasus" spyware and violations of the law during the use of operational control by special services;
- 2) assess the impact of disclosed cases of illegal surveillance on the election process in Poland;
- 3) participate in the examination of a legislative initiative aimed at reforming the activities of secret services.

The Commission mainly gathers evidence of the use of PEGASUS in Poland. During its meetings, the Commission interrogates persons intercepted with the use of the PEGAUS (mainly politicians and politically-engaged lawyers) and experts in the field of cybersecurity. What is important, the Commission does not have any investigative powers – especially it can not call witnesses under strict penal liability.

6 Rights of the child

6.1 Measures addressing vulnerabilities of children living in poverty and developments regarding the national implementation of the EU Child Guarantee

Measures addressing vulnerabilities of children living in poverty and developments regarding the national implementation of the [EU Child Guarantee](#).

Legislative changes	<p><i>e.g., any legislative development having an impact on children accessing health, education, social protection or other services</i></p> <p>The Resolution of the Council of Ministers on the National Action Plan for the implementation of EU Child Guarantee.⁶⁵</p> <p>On July 22, 2022, the Council of Minister adopted a resolution on the National Action Plan. The National Action Plan is a document prepared by the The Council of Employment, Social Policy, Health and Consumer Affairs in order to implement the EU Child Guarantee. ⁶⁶</p> <p>The National Action Plan includes solutions for:</p> <ul style="list-style-type: none">- homeless children experiencing severe housing deprivation;- children with disabilities;
----------------------------	--

⁶⁵ Poland, Chancellery of the Prime Minister (*Kancelaria Prezesa Rady Ministrów*) (2022), [Dokumenty rządowe przyjęte przez Radę Ministrów w trybie obiegowym](#), press release, 22 July 2022.

⁶⁶ Poland, [National Action Plan for the implementation of EU Child Guarantee](#) (Krajowy Plan Działania na rzecz realizacji Zalecenia Rady (UE) 2021/1004 z dnia 14 czerwca 2021 r. w sprawie ustanowienia europejskiej gwarancji dla dzieci).

- children with mental health problems;
- children of immigrants, ethnic minorities and refugees from Ukraine;
- children under foster care;
- children in a precarious family situation.

In the first part of the Plan, the current problems of children were identified along with their detailed analysis (e.g. the growth of children in the homelessness crisis, the increase in the number of children with mental problems).

The second part of the Plan presents the planned reforms aimed at improving the situation of particular groups of children. The Plan describes, inter alia, the reform of the functioning of the public rental market, the inclusion of local governments in improving the situation of children, and the reform aimed at introducing a new mental health care system for children and adolescents. The plan also provides for systems for monitoring the results of the implemented solutions.

The Plan also includes detailed reforms, such as:

- the Strategy for People with Disabilities 2021-2030. In the first phase of the Strategy (2021-2023), children with disabilities or at risk of permanent disabilities are to be provided with specialist medical care and preventive measures; it is also focused on the prevention in the area of mental health of children and adolescents, as well as raising public awareness in the field of inclusive education for people with disabilities. The next phases are focused on supporting parents of the children with disabilities and adapting public spaces to the needs of children with disabilities;
- a reform introducing a new model of the mental health care system for children and adolescents. The new model assumes the creation of a network of centers within three reference levels. Each reference level will help patients with different health needs. The aim of the reform is to deinstitutionalize the system of psychiatric care for children and adolescents and to increase the

	<p>role of community services; the point of this change is to disseminate the help provided in newly established facilities located close to the childrens' place of residence;</p> <ul style="list-style-type: none"> - special support aimed at children from migrant backgrounds or ethnic minorities and children of refugees from Ukraine. This measure is to be provided, in particular, by: supporting the process of learning the Polish language, the implementation of compulsory schooling, ensuring access to health care, ensuring adequate nutrition and adequate housing for persons applying for international protection; - providing educational materials and digital educational tools, with its adaptation for children with disabilities; - improvement of the quality of inclusive education, in particular aimed at children and adolescents with disabilities and children and adolescents with mental health problems;
Policy changes	<p><i>e.g., development of national action plan for the Child Guarantee, appointment of National Coordinator, etc</i></p> <p>N/A</p>
Other measures or initiatives	<p><i>e.g., income support to single-headed families or based on number of children in the household; meals for children provided for free; other actions or measures linked to the implementation of the EU Child Guarantee.</i></p> <p>Family Caring Capital.⁶⁷</p>

⁶⁷ Poland, Ministry of Family and Social Policy (*Ministerstwo Rodziny i Polityki Społecznej*) (2021), [Od stycznia 2022 roku ważne zmiany dla rodzin](#), press release, 28 December 2021.

	<p>On January 1st, 2022, The Act on Family Caring Capital entered into force. The Act provides for significant financial support for parents of the youngest children.</p> <p>These parents will receive up to 12,000. PLN additional support - paid by PLN 1,000 per month for a year or in installments of PLN 500 for two years. The support will be independent of the family's income, the funds will not be taxed.</p> <p>The benefit will be granted for the second and subsequent children in the family aged from 12 to 35 months of age. The Ministry of Family and Social Policy estimates that only in 2022, approx. 615.000 children will be covered by this benefit. In 2022, the government will allocate approximately PLN 3.1 billion for this purpose.</p> <p>The Act also provides for subsidies to childcare places for children up to three years of age, which will not be covered by the Family Caring Capital. They are, for example, the first or only children in the family.</p> <p>According to the estimates of the Ministry of Family and Social Policy, approx. 108.000 children will be covered by this form of support; in 2022, approximately PLN 520 million will be allocated for this purpose.</p> <p>As indicated by the Ministry of Family and Social Policy, the Capital is primarily intended to help families combine work with raising children. Importantly, funds from the Capital will be granted to each family, regardless of the parents' income.</p> <p>Governmental support programmes: 'The Energy Shield'⁶⁸, 'The Solidarity Shield'⁶⁹, 'The Anti-Inflation Shield'⁷⁰.</p> <p>The Energy Shield</p>
--	---

⁶⁸ Poland, Chancellery of the Prime Minister (Kancelaria Prezesa Rady Ministrów) (2022), [Rządowa Tarcza Energetyczna](#), press release, 2022.

⁶⁹ Poland, Chancellery of the Prime Minister (Kancelaria Prezesa Rady Ministrów) (2022), [Rządowa Tarcza Solidarnościowa](#), press release, 2022.

⁷⁰ Poland, Chancellery of the Prime Minister (Kancelaria Prezesa Rady Ministrów) (2022), [Rządowa Tarcza Antyinflacyjna](#), press release, 2022.

The Energy Shield is a programme implemented in order to support Polish families in connection with a sudden increase of energy costs.

The Shield has frozen the natural gas prices at the level of prices approved by the President of Energy Regulatory Office at the end of 2021. As indicated in the justification of the Shield, the lack of such protection would result in an increase in gas fuel charges for household consumers by over 600%.

The government has also introduced a one-off 'carbon allowance', which consists of a direct transfer of PLN 3,000 for households that are heated with coal, briquettes or pellets; this allowance has no income criteria. There are also one-off subsidies for households using other heating sources.

The Solidarity Shield

The Solidarity Shield was implemented in order to protect Polish households against sudden increase of electricity costs. The Shield has set constant electricity prices for households for annual consumption of:

2000 kWh for households;

2600 kWh for people with disabilities;

3000 kWh for large families (with the Big Family Card) and farms.

The Anti-Inflation Shield

The point of the Anti-Inflation Shield is to reduce the following taxes:

- the VAT and excise duty on electricity costs,
- the VAT and excise duty on motor fuels,
- the VAT on natural gas and heat,

the VAT on food.

6.2 Legal and policy developments or measures in relation to child-friendly procedures for children as victims, witness or suspects/accused in criminal proceedings.

Legislative changes	<p><i>e.g., reform of the criminal code, new law on violence against children with procedural safeguards.</i></p> <p>Draft amendment to the Code of Criminal Procedure and other Acts.⁷¹</p> <p>On September 24, 2020, the Ministry of Justice presented a Draft amendment to the Code of Criminal Procedure and other Acts. The amendment was prepared in order to adjust Polish law to European Union law and UN conventions.</p> <p>As indicated in the justification of the project, this amendment is to be a full implementation of the Directive 2016/800 on procedural safeguards for children and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.⁷²</p> <p>For this purpose, a number of amendments to the Code of Criminal Procedure concerning juveniles were introduced, inter alia, the right to: professional legal assistance, recording of interrogations, personal presence at the trial, participation of persons indicated by the juvenile during the trial and some sessions, mandatory environmental interview of the accused juvenile, as well as the amendments to the Executive Penal Code regarding special rights of the juveniles</p>
----------------------------	---

⁷¹ Poland, [Draft of the Act amending the Code of Criminal Procedure and some other acts](#) (*Projekt ustawy o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*), 3 August 2020.

⁷² Poland, [Draft of the Act amending the Code of Criminal Procedure and some other acts](#) (*Projekt ustawy o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*), 3 August 2020, justification of the project.

during deprivation of liberty. Importantly, the definition of a juvenile has also been clarified - a juvenile is to be defined as a person under 18 years of age.

Currently, the Draft has not yet been submitted for approval to the Council of Ministers – it is being analyzed by the parliamentary Legal Commission.⁷³

Act on the support and resocialization of juveniles.⁷⁴

On September 1st, 2022, The Act on the support and resocialization of juveniles entered into force - a comprehensive act, covering 7 sections and over 400 articles.

As pointed out by the Deputy Minister of Justice, the basic assumption of the reform is to change the approach to juvenile perpetrators - to provide appropriate treatment for juveniles who promise improvement and treat effectively the perpetrators of serious crimes.⁷⁵ This act introduces the obligatory referral to a correctional facilities of juveniles, who committed the most serious crimes, for example: murder, assassination of the president, causing serious damage to health, or a disaster in land traffic.

The Act also defines the minimum age limit of criminal liability for juvenile perpetrators at the level of 10 years old - the current regulation did not provide the minimum age of liability for those perpetrators.

The Act also introduces new powers for school principals to deal with minor offenses committed by the pupils - the school will not have to notify the police or family court about commitment of those offenses. Instead, the principal will be able to impose 'educational measures' on the pupil - for example, the principal may assert the pupil with an oral warning or a written warning,

⁷³ Poland, [Draft law amending the Code of Criminal Procedure and certain other acts](#) (*Projekt ustawy o zmianie ustawy – Kodeks postępowania karnego oraz niektórych innych ustaw*), 24 September 2020.

⁷⁴ Poland, [Act on the support and resocialization of juveniles](#) (*Ustawa o wspieraniu i resocjalizacji nieletnich*) 9 June 2021.

an apology to the aggrieved party, restoration of the previous state or performance of specific cleaning works for the school.

A new measure of an isolation nature, dedicated for juvenile perpetrators, was also created. This facility was created under the authority of the Minister of Justice and is dedicated for juveniles who have committed a punishable act with the features of a crime or a misdemeanor. The juvenile will be sent there if this is supported by the level of his demoralization, if other educational measures have turned out to be ineffective or do not predict the juvenile's resocialization.

The Act provides for the possibility of providing assistance to a juvenile perpetrators who gave birth to a child during the execution of corrective measures.

The Ombudsman has prepared a detailed analysis of the Act, but his objections have been ignored.⁷⁶ As pointed out in the analysis, the solutions set out in the Act may be inconsistent with constitutional and international standards for the protection of the rights and freedoms of juveniles. The Act also does not meet international standards related to the deprivation of liberty of juveniles. Moreover, the authors of the Act has ignored the comments and recommendations prepared by the international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, The Subcommittee on the Prevention of Torture and the Committee Against Torture.

The abovementioned objections are aimed especially at:

- new powers of school principals which may lead to double punishment of juveniles;
- possibility of the use of handcuffs for juveniles under certain conditions;
- lack of compulsory medical examinations of juveniles during certain types of detention;

⁷⁶ Poland, [The new Act on the support and resocialization of juveniles. The opinion of the Ombudsman was not taken into account.](#) (Nowa ustawa o wspieraniu i resocjalizacji nieletnich. Nie wzięto pod uwagę opinii RPO), 25 July 2022.

	<ul style="list-style-type: none"> • lack of certain procedural guarantees for juveniles during detention. <p>Protection of victims of domestic violence.⁷⁷</p> <p>On September 19th, 2022, a governmental Act on strengthening the protection of people experiencing domestic violence was submitted to the Sejm.</p> <p>The Act introduces provisions aimed at isolating a person who uses domestic violence when his behavior poses a threat to the life or health of the household members, also outside of a shared flat. In order to protect victims of domestic violence, new powers of the Police and Military Gendarmerie were introduced with regard to persons using domestic violence. These authorities will be able to issue an immediate ban on approaching or contacting with a person affected by domestic violence.</p> <p>According to the draft, the court will be able to order a ban on contact also when the person using domestic violence harasses the person affected by the violence by means of electronic communication at a distance. The court will be able to prohibit contact also when the person using domestic violence harasses the person affected by the violence at a distance, arousing a sense of threat, humiliation or torment, justified by circumstances, or seriously violates their privacy.</p>
<p>Policy developments</p>	<p><i>e.g., guidance or training for law enforcement officers on the treatment of child suspects or victims; amendment of police academy curriculum; training of judges; developing indicators to monitor the situation of child suspects and improve data collection.</i></p>

⁷⁷ Poland, [Governmental draft law amending the Code of Civil Procedure and certain other acts](#) (Rządowy projekt ustawy o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw), print no. 2615, 19 September 2022.

	<p>POWER ON - programme aimed at increasing the competences of the Police with regard to crime victims.⁷⁸</p> <p>The program is carried out, both at the local and national level, until the end of 2022. Its purpose is to raise the competences of services providing support to crime victims, increase awareness of the Police and disseminate knowledge among crime victims, including juveniles and women. The program includes series of lectures and conferences dedicated for police officers.</p> <p>"Child as a witness or victim in criminal proceedings - legal and psychological aspects" – course organized by the National School of Judiciary and Public Prosecution.⁷⁹</p> <p>This course is dedicated to judges, judge's assessors, public prosecutors and public prosecutor's assessors working in criminal departments. The training plan covers issues such, inter alia, hearing the child before the court in preparatory proceedings, protecting the child from secondary victimization, procedural guarantees of a juvenile victim and his representation in criminal proceedings.</p>
<p>Other measures or initiatives</p>	<p><i>e.g., relevant activities to promote alternatives to detention; set-up of Barnahus houses or other specific programmes for children in the criminal system.</i></p>

⁷⁸ Poland, Police, [Szkozenie policjantów pn. „komunikacja interpersonalna a różnice kulturowe w kontakcie z ofiarą przestępstwa” w ramach projektu „power on”](#), 16 May 2022.

⁷⁹ Poland, National School of the Judiciary and the Prosecution, [Training schedule of the National School of Judiciary and Public Prosecution](#), 2022.

	N/A
--	------------

7 Access to justice – Victims’ Rights and Judicial Independence

7.1 Legal and policy developments or measures relevant to the implementation of the Victims’ Rights Directive and the EU strategy for Victims’ Rights 2020-2025

Proposed penalisation of failure to fulfil compensatory measures imposed in criminal proceedings

Within the framework of a major amendment to the Criminal Code announced in February 2022,⁸⁰ the Parliament proposed to penalise the failure to fulfil compensatory measures imposed by courts in criminal proceedings.

According to current provisions, only the defendant’s failure to fulfil penal measures listed under Article 39 of the Criminal Code (e.g. prohibition from occupying a specific position, operating vehicles or entering mass events) bears his or her criminal liability. The proposed amendment aims at penalising also non-compliance with the court’s judgement as regards compensatory measures. Compensatory measures include the obligation to redress the damage inflicted by a crime or to compensate for the suffered harm, as well as punitive damages (Articles 47-48 of the Criminal Code).

The proposed amendment foresees the introduction of Article 244c, according to which in case of failure to fulfil compensatory measures imposed by the court for the benefit of the victim the perpetrator will be subject to the penalty of deprivation of liberty (for between 3 months and 5 years). Prosecution will be launched upon the motion of the victim. The perpetrator will be able to exculpate by paying the entire sum of compensatory measures within 30 days from the first hearing in the capacity of a suspect.

Although the amendment concerns only crimes prosecuted *ex officio* and excludes those under private indictment, the general direction of proposed changes aimed at safeguarding the judgements’ implementation is likely to contribute to the victim’s right to compensation from the offender in the course of criminal proceedings. On the other hand, by creating a new type of crime, the amendment

⁸⁰ Poland, Draft act amending the Criminal Code and certain other acts ([Ustawa o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#)), 7 July 2022.

is criticised for the risk of winding the spiral of criminal liability resulting from one cause.⁸¹

The amendment was adopted by the Sejm (the lower House of the Parliament) on 7 July 2022, however, the Senate rejected the bill in its entirety on 4 August 2022.⁸² After the bill had been adopted by the Sejm again, the President signed it on 2 December 2022,⁸³ despite criticism on the part of numerous legal scholars⁸⁴ and practitioners⁸⁵ referring to its certain provisions (e.g. the introduction of the penalty of life imprisonment without the possibility of conditional early release or the mandatory forfeiture of vehicles in the case of driving under the influence of alcohol or substances). The law will enter into force on 14 March 2023.

Minimum amounts of pecuniary payment for the Justice Fund

Another amendment to the Criminal Code,⁸⁶ adopted in August 2022, defined the minimum amounts of financial payment for the Justice Fund.

According to Article 43(1) of the Criminal Code, the court may order the pecuniary payment for the benefit of the Harmed Parties' Aid Fund or the Post-penitentiary Aid (the Justice Fund). The amount of such payment may not exceed PLN 60,000.

The amendment extended the catalogue of crimes for which the minimum amount of such payment is set at the level of PLN 5,000 and now includes more than 10 types (e.g. bringing about an immediate danger of an incident threatening life and health of multiple persons or property of great extent; operating a motor vehicle while being intoxicated or under the influence of a stupeficient substance; certain crimes against sexual liberty).⁸⁷ The amendment adds also new types of crimes for which the minimum level is PLN 10,000 (e.g. recording or possession of child porn).

The amendment entered into force on 1 January 2023.

⁸¹ P. Szymaniak, [Wizja krat ma zmobilizować do naprawienia krzywd](#), Dziennik Gazeta Prawna, 7 April 2022.

⁸² Poland, Governmental draft law amending the Criminal Code and certain other acts ([Rządowy projekt ustawy o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#)), 5 August 2022.

⁸³ M. Auzbiter, [Prezydent podpisał nowelizację Kodeksu karnego](#), Rp.pl, 2 December 2022.

⁸⁴ Wyborcza.pl, [173 prawników karnistów apeluje do prezydenta Dudy o zawetowanie nowelizacji kodeksu karnego](#), 25 November 2022.

⁸⁵ M. Mikowski, [Nowelizacja Kodeksu karnego: Adwokatura wzywa prezydenta do zawetowania ustawy](#), Gazetaprawna.pl, 22 November 2022.

⁸⁶ Poland, Act amending the Executive Criminal Code and certain other acts ([Ustawa o zmianie ustawy - Kodeks karny wykonawczy oraz niektórych innych ustaw](#)), 5 August 2022.

⁸⁷ Ibid, Article 7(1).

Certain amendments to the Code of Criminal Procedure concerning victims

The amendment adopted by Sejm on 7 July 2022 (mentioned in the first section of the chapter) also foresees certain changes as regards executing the victim's procedural rights.

First, it modifies rules related to launching investigations in case of criminal threat (as described under Article 190 of the Criminal Code).⁸⁸ In principle, criminal threat is a crime prosecuted upon the victim's motion.⁸⁹ According to the amendment, it will be possible to launch the proceedings absent such motion, provided that it is highly probable that the victim's failure to file the motion resulted from his or her fear of retaliation or it is justified by the public interest.

Second, the amendment sets a time limit for lodging a motion for imposing certain prohibitions for the perpetrator of crime against sexual liberty. According to the new law, the victim will be able to file such a motion until the conclusion of the judicial examination within the first main trial.⁹⁰ Among prohibitions that the court will be authorised to impose on the perpetrator, there are: prohibition of staying in certain places, contacting certain persons, approaching certain persons or leaving certain places without the court's permission.⁹¹ The court will also be able to order that the perpetrator leave premises co-inhabited with the victim.

The law will enter into force on 14 March 2023.

7.2 Measures addressing violence against women

Draft amendment to the anti-violence provisions

On 19 September 2022 the Parliament received a draft amendment to the Code of Civil Procedure and certain other acts, authored by the Ministry of Justice.⁹² The bill concentrates on clarifying the provisions related to combating domestic violence, which came into force under the collective name of the "anti-violence package" in November 2020.⁹³

⁸⁸ Poland, Draft act amending the Criminal Code and certain other acts ([Ustawa o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#)), 7 July 2022, Article 9(1).

⁸⁹ Poland, Criminal Code (*Kodeks karny*), 6 June 1997, Article 190(2).

⁹⁰ Poland, Draft act amending the Criminal Code and certain other acts ([Ustawa o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw](#)), 7 July 2022, Article 9(5).

⁹¹ Ibid, Article 1(10).

⁹² Poland, Governmental draft act amending the Code of Civil Procedure and certain other acts ([Rządowy projekt ustawy o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw](#)), parliamentary print no. 2615, 19 September 2022.

⁹³ Poland, Act amending the Code of Civil Procedure and certain other acts ([Ustawa o zmianie ustawy Kodeks postępowania cywilnego oraz niektórych innych ustaw](#)), 30 April 2020.

The amendment introduces 3 new measures aimed at isolating perpetrators of domestic violence from their victims. These measures include the possibility to impose:

- 1) a restraining order specifying the minimum distance (expressed in metres) the perpetrator is obliged to keep from the victim;
- 2) a prohibition of contacting the victim;
- 3) a prohibition of entering and staying in the premises where the victim usually or regularly resides (e.g. educational, care, sports facilities or workplace).⁹⁴

The decision imposing the above measures will be issued by the police and immediately effective and enforceable. Upon the perpetrator's motion, the court will decide on the extension or reduction of the duty.

Failure to comply with the imposed duties will bear criminal liability, under the penalty of deprivation of liberty up to 30 days, limitation of liberty or fine.⁹⁵

As the new measures are aimed at prohibiting the perpetrator from entering the residence of or contacting the victim, they constitute new types of barring orders in the meaning of Article 52 of the Istanbul Convention (complementing the ones already introduced in November 2020). They are a step toward the implementation of 2021 GREVIO's recommendation⁹⁶ to relate the protection to the person, and not merely to the premises. On the other hand, however, the proposed amendment does not address the limited subjective scope of application of the anti-violence provisions – which was raised, among others, by the Ombudsman.⁹⁷ According to the Ombudsman, the term used in the provisions ("violence within the family") should be replaced with "domestic violence" to extend protection to e.g. former spouses or partners. The Commissioner for Human Rights also emphasised that the protection should be applied regardless of whether the victim lives together with the perpetrator.

The new law also extends the possibility of ordering to leave certain places by means of precautionary measures in pending criminal proceedings. According to the draft amendment, a person accused of a criminal offence committed with the use of violence to the detriment of a person remaining in a common household

⁹⁴ Poland, Governmental draft act amending the Code of Civil Procedure and certain other acts ([Rządowy projekt ustawy o zmianie ustawy - Kodeks postępowania cywilnego oraz niektórych innych ustaw](#)), parliamentary print no. 2615, 19 September 2022, Article 1(5).

⁹⁵ Ibid, Article 2.

⁹⁶ Council of Europe, [GREVIO's \(Baseline\) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\) POLAND](#), 16 September 2021, § 284.

⁹⁷ Z. Ganczewska, [Natychmiastowa izolacja sprawcy przemocy. Ocena zmian przepisów, niemal dwa lata po](#), November 2022, p. 44.

with them may be ordered to periodically leave not only the premises occupied together with the injured, but also its closest vicinity.⁹⁸ The order will be issued by the public prosecutor investigating the case or supervising the investigation conducted by the police, or by the court before which the trial is pending. The prosecutor or court will be also authorised to impose a restraining order determining the distance between the perpetrator and the victim. The prosecutor or the court will be able to do so whenever there is a justified risk that the accused would commit the criminal offence with the use of violence once again against a person in common household.

As of January 2023, the work on the draft law is still ongoing after the Senate had proposed several technical and detailing amendments to it in December 2022.⁹⁹

Need for an amended legal definition of rape and other types of crimes involving sexual violence

The Ombudsman has addressed the Minister of Justice with regard to the need for amending the legal definition of rape and other crimes against sexual liberty in conformity with the Istanbul Convention.

In his letter of February 2022,¹⁰⁰ the Commissioner for Human Rights has emphasised the necessity to raise the standard of protection for sexual violence victims by linking criminal sanctions to every act of nonconsensual sexual intercourse, regardless of the perpetrator's mode of action or any feature of the victim excluding the conscious expression of their will. In the Ombudsman's opinion, such consent remains a focal point of numerous international legal instruments related to combating sexual violence which Poland is bound by, in particular Article 36 of the Istanbul Convention.

Under the current wording of the Polish legal provisions, the decisive factor for determining that rape has been committed is that the perpetrator used force, unlawful threat or deceit.¹⁰¹ For the crime of inducing a person to engage in a sexual intercourse or to submit themselves to a sexual activity, the perpetrator has to take advantage of the victim's helplessness due to their mental impairment or a mental illness.¹⁰² None of the definitions refers explicitly to the victim's conscious expression of will.

The necessity to improve Polish legislation concerning sexual violence, in particular Articles 197-200 of the Criminal Code, has already been raised by the

⁹⁸ Ibid, Article 6(10).

⁹⁹ Poland, Sejm, [The course of legislative process as regards parliamentary print no. 2615](#) (accessed: 6.01.2023).

¹⁰⁰ Poland, Commissioner for Human Rights, [Letter to the Minister of Justice-Prosecutor General](#), 11 February 2022.

¹⁰¹ Poland, Criminal Code, 6 June 1997, Article 197(1).

¹⁰² Ibid, Article 198(1).

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). In its first baseline report on Poland published in 2021, GREVIO observed that by linking criminal responsibility “to the degree of physical violence or threat employed, or to the degree of the victim’s helplessness, inability to offer resistance or to express their consent/will”, Polish law fails to “fully capture the realities of women experiencing sexual violence and how they respond to threat (flight, fight, freeze, flop or befriend)”.¹⁰³ Consequently, as GREVIO concluded, not all forms of sexual violence are criminalised in Poland, contrary to the Istanbul Convention.

Uncertain future of the Istanbul Convention

Although Poland has been bound by the The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) since 2015, its future still remains unclear.

In July 2020, the Prime Minister referred a motion to the Constitutional Court¹⁰⁴ requesting review of the Convention’s certain provisions’ compatibility with the Polish Constitution. The motion questions, among others, Article 6 of the Convention, which foresees an obligation to undertake gender-sensitive policies, as well as Article 14, concerning education on issues such as equality, non-stereotypical gender roles or gender-based violence.

As of January 2023, the case before the Constitutional Court is still pending,¹⁰⁵ whereas the most recent pleadings were filed in September 2020.¹⁰⁶ The Ombudsman, who joined the proceedings, requested its discontinuation or, alternatively, establishing that the questioned provisions are not incompatible with the Constitution.¹⁰⁷

¹⁰³ Council of Europe, [GREVIO’s \(Baseline\) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\) POLAND](#), 16 September 2021, p. 62.

¹⁰⁴ Poland, Prime Minister, [Motion for the review of constitutionality](#), case no. K 11/20, 30 July 2022.

¹⁰⁵ Poland, Constitutional Court, [Konwencja Rady Europy o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej \(case no. K 11/20, pending\)](#) (accessed: 6.01.2023).

¹⁰⁶ <https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%2011/20>

¹⁰⁷ The Commissioner for Human Rights, [Pleading in case K 11/20](#), 19 August 2020.

8 Developments in the implementation of the Convention on the Rights of Persons with Disabilities

8.1 CRPD policy and legal developments & implementation of the European Accessibility Act

Professional activation of persons with disabilities

In February 2022 the Supreme Audit Chamber (*Najwyższa Izba Kontroli*) published its report¹⁰⁸ concerning the professional activation of persons with disabilities in Poland. The report summarises the outcomes of control conducted in 21 district labour offices (*powiatowe urzędy pracy*) in years 2018-2020 and provides relevant quantitative data.

The report's general observation concerns the ineffectiveness of professional activation for persons with disabilities applied by labour offices, which fails to restore such persons to the labour market permanently. According to the data obtained from labour offices, almost 4,5000 out of 75,000 persons registered as unemployed in total between years 2018 and 2020 had disabilities. Moreover, persons with disabilities constituted half of the long-term unemployed registered in labour offices.

According to the report, several systemic deficiencies contributing to the problem were identified. Among them, the Supreme Audit Chamber indicated in particular the lack of a consistent, holistic labour market policy which would encourage professional activation of persons with disabilities. In addition, the labour offices' activities are limited only to registering persons as unemployed, failing to recognise the current needs of persons with disabilities. The controlled labour offices were also relatively

¹⁰⁸ Poland, Supreme Audit Chamber, Professional activation of persons with disabilities conducted by district labour offices ([Aktywizacja zawodowa osób z niepełnosprawnościami przez powiatowe urzędy pracy](#)), 10 February 2022.

reluctant to subsidise launching businesses by persons with disabilities (only 110 positive decisions out of the total 8,177 successful applications, which constitutes 1,3%).

The report indicated also a low number of job offers available in labour offices for persons with disabilities – the unsubsidised ones, as well as positions for which the costs are covered by the state.

In conclusions, the Supreme Audit Chamber urges the Ministry of Family, Labour and Social Policy to take steps aimed at improving efficiency of the system of professional activation. The report invokes the Governmental Strategy for Persons with Disabilities 2021-2030, published in the Journal of Laws in February 2021.¹⁰⁹ According to the strategy's authors, the main indicator monitoring its implementation will be the labour force participation of persons with disabilities in the working-age population (with its anticipated value rising from 35% in 2025 to 45% in 2030). Moreover, in October 2021, the Governmental Plenipotentiary for Persons with Disabilities announced that a national employment programme for this group will be prepared.

Care benefits for guardians of adult persons with disabilities

Poland still has not implemented the judgement of the Constitutional Tribunal of 2014 concerning care benefits for guardians of adult persons with disabilities.¹¹⁰

In this judgement, the constitutional court has declared the situation in which the benefit's value is different depending on the moment the disability was determined (significantly lower if the person was already an adult) unconstitutional.

Despite the declaration of the Senate's head of legislative committee made in 2020,¹¹¹ no draft amendment to the act regulating care benefits has been published by the higher House of Polish parliament yet.¹¹²

¹⁰⁹ Poland, Prime Minister, The Government announces the strategy for persons with disabilities ([Rząd ogłasza strategię na rzecz Osób z Niepełnosprawnościami na lata 2021-2030](#)), 16 February 2021.

¹¹⁰ Poland, Judgement of the Constitutional Court, case no K 38/13, 21 October 2014.

¹¹¹ Poland, Commissioner for Human Rights, [Szansa dla opiekunów osób z niepełnosprawnością, Senat podjął prace nad wykonaniem wyroku TK z 21 października 2014 r.](#), 6 July 2020.

¹¹² Poland, Senate, [List of current legislative initiatives](#), 10 October 2022.

The necessity for legal amendment has been continuously raised by the Commissioner for Human Rights.¹¹³

Electoral rights of incapacitated persons

The Senate is still working on a draft amendment to the Electoral Code allowing the incapacitated (e.g. due to their mental disorders or disabilities) to vote in elections to the European Parliament.¹¹⁴

Currently, the Electoral Code deprives such persons of the right to vote in all types of elections.¹¹⁵ However, whereas in the case of presidential, parliamentary and local elections such limitation is provided by the Constitution, the lack of electoral rights in European elections is only stipulated by an act. Therefore, it is possible to change it without amending the Constitution (which requires a qualified majority).

Granting electoral rights to the incapacitated has long been advocated by the Commissioner of Human Rights.¹¹⁶ It will be in conformity with the jurisprudence of the European Court of Human Rights, and will follow a precedent judgement of a Polish court¹¹⁷ ordering to add a partially incapacitated person to the voters' register. According to the court's argumentation in the latter case, partial incapacitation does not preclude making a rational and conscious choice.

8.2 CRPD monitoring at national level

¹¹³ Poland, Commissioner for Human Rights, [Rzecznik Praw Obywatelskich o potrzebie zmian przepisów dotyczących osób niepełnosprawnych](#), 3 January 2022.

¹¹⁴ Rp.pl, [Osoby ubezwłasnowolnione będą mogły głosować w eurowyborach - wkrótce projekt ustawy](#), 21 July 2021.

¹¹⁵ Poland, Electoral Code (*Kodeks wyborczy*), 5 January 2011, Article 10(2)(3).

¹¹⁶ Poland, Commissioner for Human Rights, Electoral rights for the incapacitated. Marcin Wiącek's opinion for the Senate ([Prawa wyborcze także dla ubezwłasnowolnionych. Opinia Marcina Wiąckę dla Senatu](#)), 9 November 2021.

¹¹⁷ Poland, [Decision of the District Court in Nowy Sącz \(case no. I Ns 376/19\)](#), 19 April 2019.

The Ombudsman's opinion on the objectives of the draft law governing personal assistance for persons with disabilities

On 12 April 2022, the Chancellery of the President of Poland presented the main objectives of the new law on personal assistance for persons with disabilities.¹¹⁸

In May 2022, the Ombudsman addressed the Chancellery of the President, for the second time, with regard to these objectives.¹¹⁹ The Ombudsman expressed his hope that the proposed changes will contribute to a holistic reform of the personal assistance system for persons with disabilities, in conformity with CRPD.

In particular, the Commissioner for Human Rights proposed the following issues to be included when drafting the law:

- to abolish full and partial incapacitation in Polish law and replace it with supported decision-making so that all persons with disabilities could make a decision to take advantage of personal assistance;
- to separate the possibility of having a personal assistant from the age criterion (currently: 16-65), which suggests the limitation of personal assistance only to professional activation, whereas under CRPD it should be interpreted broadly;
- to introduce a more flexible approach when deciding on the scope of personal assistance (currently: the temporal scope and range of assistance should be strictly defined in a decision on granting the assistance).

In 2021, the Ombudsman has emphasised that availability of personal assistance is one of the most fundamental instruments envisaged by CRPD (Article 19b) and that the UN Committee on the Rights of Persons with Disabilities indicated in 2018 the lack of systemic solutions in this field in Poland.¹²⁰ The Ombudsman has pointed out that personal assistance should always be adjusted to individual needs of a particular person, as well as that persons with disabilities should be free to choose the level of control over the service, according to their needs, capabilities, lifestyle and preferences.

¹¹⁸ B. Dązbłaż, [Prezydencki projekt o asystencji osobistej w kontrze do reformy systemu orzekania](#), Prawo.pl, 19 May 2022.

¹¹⁹ Poland, The Commissioner for Human Rights, [Letter to the Chancellery of the President of Poland](#), 11 May 2022.

¹²⁰ Poland, The Commissioner for Human Rights, [Asystenci osób z niepełnosprawnościami. Uwagi RPO do założeń nowych przepisów](#), 15 December 2021.

Annex 1 – Promising Practices

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one example of a promising practice to tackle discrimination against LGBTIQ people or discrimination on the grounds of socio-economic status, health status and physical appearance, such as awareness raising campaigns or training for relevant professionals. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2022 relevant to equality and non-discrimination of LGBTIQ people or on the other above-mentioned grounds, preferably one conducted by a national equality body.
Title (original language)	Klauzule antydyskryminacyjne w miejskich umowach
Title (EN)	Anti-discrimination clauses in city contracts
Organisation (original language)	Miasto stołeczne Warszawa
Organisation (EN)	Capital City of Warsaw
Government / Civil society	Local government
Funding body	City of Warsaw
Reference (incl. URL, where available)	https://publicystyka.ngo.pl/klauzule-antydyskryminacyjne-w-miejskich-umowach-z-organizacjami-spolecznymi
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	The practice was initiated with the signing of the LGBT+ Declaration by the Mayor of Warsaw in 2019, but its real impact can be assessed now. The Mayor issued Ordinance No. 136/2020 of 5 February 2020 on the principles of lease of commercial premises including a provision under which activities that are not permitted in commercial premises, subject to termination of the contract with the tenant, include direct or indirect discrimination with regard to protected characteristics, such as gender, gender identity and sexual orientation. In 2022 the new templates of competition notice for the implementation of public tasks, as well as for contracts with social organizations and lease contracts were adopted.

	The competition notice templates include § 3. Conditions of the public task, which mentions the need to ensure equal treatment of all participants in the task.
Type of initiative	governmental
Main target group	NGOs, tenants
Indicate level of implementation: Local/Regional/National	local
Brief description (max. 1000 chars)	<p>It is good practice to stipulate as a condition for the performance of public tasks by social organisations the respect of the principle of equal treatment and the condition for the use of business premises.</p> <p>The adopted templates of competition notice for the implementation of public tasks include § 3. Conditions of the public task, which mentions the need to ensure equal treatment of all participants in the task.</p> <p>Contracts for the implementation of public tasks by social organizations stipulate: "The contractor shall not commit acts or omissions bearing the hallmarks of direct or indirect discrimination, in particular on the basis of characteristics such as gender, race, ethnic origin, nationality, religion, creed, worldview, disability, age or sexual orientation. Differential treatment of persons on objectively justified grounds does not constitute a case of discrimination."</p> <p>The contract does not provide for any specific sanctions for failure to comply with this point, other than the "standard" ones, i.e. unilateral termination of the contract by the relevant office or district of the City of Warsaw) in the event that:</p> <ol style="list-style-type: none"> 1) the grant is used contrary to its purpose or collected in an excessive amount or unduly, i.e. without legal basis; 2) the contract is executed untimely and improperly, in particular, the material scope of the public task carried out has been reduced. <p>Contracts for the lease of commercial premises of the City of Warsaw contain a clause: "The tenant, the tenant's personnel, as well as any entities and persons independently providing services or selling goods in the tenant's premises shall not commit acts or omissions bearing the hallmarks of direct or indirect discrimination,</p>

	<p>in particular on the basis of such characteristics as gender, race, ethnic origin, nationality, religion, creed, worldview, disability, age or sexual orientation."</p> <p>Furthermore, a failure to comply with the anti-discrimination clause results in termination of the lease. Such violations of the anti-discrimination clause may be confirmed by non-governmental organizations acting in consultation with the City. The City also has the right to collect and forward to the tenant complaints and comments from residents of the City of Warsaw as well as persons who believe that cases of discrimination have occurred or are occurring in the Tenant's premises. The Tenant is to make every effort to respond to the communicated complaints.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	The use of anti-discrimination clauses in contracts with social organisations for the performance of public tasks and in contracts for the lease of commercial premises is transferable
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>This practice can be an effective and lawful restriction on the activities of organizations that openly or tacitly engage in discriminatory activities.</p> <p>For example, the March of Independence Association, which is known for its racist and homophobic activity, had to change its headquarters for this reason.</p> <p>https://www.pap.pl/aktualnosci/news%2C839327%2Cgw-ratusz-zada-wyprowadzki-stowarzyszenie-nie-powinno-dzialac-w-lokalu</p>
Give reasons why you consider the practice as having concrete measurable impact	This practice has measurable effects because it prevents overt acts of discrimination, for example, in the form of refusing to let LGBTQ people enter a club.
Give reasons why you consider the practice as transferable to other settings	This practice applies to contracts entered into by local government bodies, so it can be transferred to other countries. Differences in adopting this practice may relate to the assessment of an alleged violation of an anti-discrimination clause and to sanctions.

and/or Member States?	
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	<p>As regards the form of competition notice, it is possible that the office or district announcing the competition or the social dialogue committee consulting on the draft competition notice deems it necessary and reasonable, it can add a point to the evaluation sheet regarding the bid's compliance with anti-discrimination requirements.</p> <p>As regards the form of lease contract, the content of the anti-discrimination clause was developed by a team that included representatives of the city hall, NGOs and entrepreneurs. In addition, assessment of whether the clause has been violated by tenants can be made on the basis of NGO complaints.</p>
Explain, if applicable, how the practice provides for review and assessment.	<p>In this practice, the realization of public tasks is subject to evaluation, including in terms of non-discrimination. In contrast, the lease of commercial premises may be subject to termination in the event of a breach of the principle of non-discrimination.</p>

Thematic area	<p>RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide one example of a promising practice to address racism and xenophobia. Please give preference to a promising practice about participation and engagement of Equality bodies and CSOs in addressing racism and hate crime. Where no such practice exists, please provide one example of a promising practice related more generally to combating racism, xenophobia, and related intolerances.</p>
Title (original language)	No promising practice has been identified for this thematic area.

Thematic area	ROMA EQUALITY AND INCLUSION Please provide one example of promising practice in relation to the two topics addressed in the chapter: regarding the implementation of national action plans and regarding the legal or policy developments addressing Roma/Travellers equality and inclusion.
Title (original language)	Edukacja antydyskryminacyjna – przedsięwzięcia szkoleniowe dla Policji. Wykłady na temat społeczności romskiej i romofobii dla przedstawicielek i przedstawicieli Policji
Title (EN)	Anti-discrimination education – educational initiative for the Police. Lectures on Roma community and romophobia for the Police
Organisation (original language)	W stronę Dialogu/ Muzeum Historii Żydów Polskich POLIN
Organisation (EN)	Towards Dialogue (NGO)/ Museum of the History of Polish Jews POLIN
Government / Civil society	Police Headquarters/ W stronę Dialogu (NGO)/ Polin Museum (cultural facility)
Funding body	EOG Financial Mechanism (85%) and state budget – Ministry of Culture and National Heritage (15%)
Reference (incl. URL, where available)	https://opolska.policja.gov.pl/op/aktualnosci/67449,Edukacja-antydyskryminacyjna.html
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2020-2024
Type of initiative	Trainings and lectures
Main target group	Police
Indicate level of implementation: Local/Regional/National	National

Brief description (max. 1000 chars)	A series of lectures and sensitivity training about Roma community and romophobia designed and conducted by Roma representatives for the Police officers.
Highlight any element of the actions that is transferable (max. 500 chars)	The whole project is easily transferrable.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	Apart from transferring knowledge and raising awareness, the project facilitates building relationships among Roma and the Police.
Give reasons why you consider the practice as having concrete measurable impact	Number of persons trained (400 in the period of 2022-2024)
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The project basically requires three elements: - understanding on the part of the Police as to the importance of such trainings - experts-by-experience from the Roma community willing to conduct trainings - curriculum of the lectures (transferrable, but needs to be adjusted to the national context).
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review	The project was designed and is being implemented by the representatives of the Roma community.

assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	Number of persons trained, easily reviewable results (level of knowledge or skills, satisfaction surveys).

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please, provide one example of a promising practice related to the topics addressed in the chapter, i.e., in relation to data protection, and/or artificial intelligence systems.
Title (original language)	Letnia Akademia Ochrony Danych Osobowych.
Title (EN)	Summer Academy of Personal Data Protection.
Organisation (original language)	Urząd Ochrony Danych Osobowych.
Organisation (EN)	Personal Data Protection Office.
Government / Civil society	Government.
Funding body	

	Personal Data Protection Office.
Reference (incl. URL, where available)	https://uodo.gov.pl/pl/138/2434
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	22-26 September 2022.
Type of initiative	Educational campaign.
Main target group	Students.
Indicate level of implementation: Local/Regional/National	National.
Brief description (max. 1000 chars)	This initiative consists of series of webinars concerning the protection of personal data and is dedicated to primary school students. The webinars are intended to emphasize the value of personal data protection and explain risks connected with the development of new technologies. Webinars are conducted by employees of the Personal Data Protection Office and teachers. The initiative concerns issues such as biometric data, dark patterns and data protection related to photos shared on the Internet. During webinars, students could learn practical ways of anonymizing their photos, deleting location data and other privacy-friendly methods using free IT tools.

Highlight any element of the actions that is transferable (max. 500 chars)	Due to the spread of remote learning, conducting webinars for students by professionals from the Personal Data Protection Office, could be considered as transeferable.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	This initiative is free of charge and takes place during the holiday break, and therefore it may be continued in future years, taking into account the new challenges related to the protection of personal data.
Give reasons why you consider the practice as having concrete measurable impact	This year's webinars were attended by students from schools from all over the country - many schools have encouraged their students to participate in webinars through school websites.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The practice is universally applicable - recently, there has been a widespread dissemination of remote learning, and therefore this initiative, aimed at increasing the awareness of personal data protection, should be considered as transferrable.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and	N/A

implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	RIGHTS OF THE CHILD Please provide a promising practice for the related topics addressed in the chapter (i.e., the impact of poverty and exclusion on children and children and justice).
Title (original language)	Akademia Przyszłości.
Title (EN)	Future Academy.
Organisation (original language)	Stowarzyszenie Wiosna.
Organisation (EN)	Wiosna Association.
Government / Civil society	Civil society.
Funding body	Private funds.

Reference (incl. URL, where available)	https://akademiaprzyszlosci.org.pl/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Start date: 2003.
Type of initiative	Mentoring programme for children in need.
Main target group	Children who have difficulties with studying, relationships and low self-esteem.
Indicate level of implementation: Local/Regional/National	National.
Brief description (max. 1000 chars)	<p>The aim of the Academy is to support children who have difficulties with low self-esteem, relationships and learning. The Academy, in cooperation with schools, reaches out to children who requires help and matches them with a personal Tutor (Volunteer), with whom the child meets once a week during individual classes.</p> <p>The Tutor's goal is to find the real causes of the child's difficulties, find a solution and then develop child's strengths. Each child has an individual approach, and the work is carried out according to a proven, safe methodology invented by the Academy. As the founders of the Academy emphasized, the Tutor is a partner, not a teacher; the Tutor, together with the child prepares their own contract contract, which includes the principles of their cooperation. This cooperation lasts for the one school year.</p>

Highlight any element of the actions that is transferable (max. 500 chars)	<p>Due to the complexity of the initiative, it should be transferred entirely.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>In every country there are children who face various difficulties caused by the poor family relationships. Moreover, the program has been running continuously since 2003. Therefore, this initiative deserves to be transferred to every country.</p>
Give reasons why you consider the practice as having concrete measurable impact	<p>Future Academy has been operating continuously since 2003 - every year, in each Voivodeship takes place the "Voivodeship Ceremony of Successes". During the ceremony, children and tutors sum up their achievements. Every year the organizers present the most promising stories of children supported by the Academy. Both the schools and the children emphasizes that participation in the Academy helped them in overcoming children's school and private-life problems.</p>
Give reasons why you consider the practice as transferable to other settings and/or Member States?	<p>The practice is universally applicable – in each Member State there are children from dysfunctional families who need support not only in field of school education, but also in everyday life. Such children need a mentor who may spend his free time and attention for children in need.</p>
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning,	<p>N/A</p>

evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	N/A

Thematic area	ACCESS TO JUSTICE – Victim’s Rights and Judicial Independence Please provide one example of a promising practice in relation to the topic address in the chapter: i.e. Victim’s Rights Directive, the EU Strategy for Victim’s Rights and violence against women.
Title (original language)	Standaryzacja świadczonej pomocy w ramach sieci pomocy pokrzywdzonym przestępstwem jako narzędzie zwiększenia efektywności świadczonej pomocy na rzecz osób pokrzywdzonych przestępstwem oraz osób im najbliższych
Title (EN)	Standardisation of help provided to crime victims and their immediate persons within the framework of crime victims assistance as means of increasing the help’s efficiency
Organisation (original language)	Stowarzyszenie Bona Fides, https://stowarzyszeniebonafides.pl/
Organisation (EN)	Bona Fides Association
Government / Civil society	Civil society
Funding body	Ministry of Justice – the Justice Fund

Reference (incl. URL, where available)	https://wysokiestandardy.pl/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2020-2023
Type of initiative	NGO
Main target group	Crime victims and their immediate persons
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>The project started with conducting (in 2021) a comprehensive diagnosis of needs and resources of aid institutions providing help to crime victims, as well as needs and barriers identified by the beneficiaries of help. The diagnosis was conducted among crime victims, employees of Crime Victims Assistance Centres (Ośrodki Pomocy Pokrzywdzonym Przystępstwem) and entities cooperating with Centres. Based on the outcomes of this diagnosis, professional standards of providing help to crime victims were developed.</p> <p>The diagnosis was conducted in three stages:</p> <ol style="list-style-type: none"> 1) quantitative study involving persons employed in various aid institutions; 2) on-line focus groups involving: employees of Crime Victims Assistance Centres (group 1); social workers, police officers, teachers, parole officers (group 2); crime victims (group 3); 3) nation-wide survey among aid institutions and crime victims. <p>The project also includes the organisation of conferences, concerning the professionalisation of staff providing help to crime victims (2020) and standards of interdisciplinary aid (scheduled for 2023, 16 editions of on-line conference for each region in Poland).</p>

	<p>The project offers a variety of trainings and courses, concerning, among others, the provisions of the anti-violence package introduced in 2020 or the aid networks available at the county level when combating violence.</p> <p>During the project, certain publications and educational materials have already been produced or will be prepared in future, such as:</p> <ol style="list-style-type: none"> 1) a handbook for aid institutions and students on the professionalisation of help provided to crime victims in order to improve its efficiency, available as a printed book and an e-book (due in 2023); 2) a series of booklets informing on particular aspects of providing help to crime victims, e.g. available public funding, the functioning of anti-violence provisions, methods of work with children affected by domestic violence; 3) an on-line database of articles on providing help to crime victims. <p>The project foresees establishing an experimental network of cooperation at the level of counties (poviats) in the Lubelskie voivodeship (region), which can later be implemented in other regions of Poland should it prove successful.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The professionalisation of aid provided to crime victims (which is the main goal of the project), if achieved, will be implemented and further developed in the functioning of persons and institutions involved in helping beneficiaries in the future.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The increased efficiency of the help system of providing aid to crime victims could be measured in future using various methods and provide information as to the project's impact. Moreover, the project will result in improving the stakeholders' and beneficiaries' knowledge (e.g. thanks to trainings offered) and provide them with concrete tools, e.g. the guidebook, booklets and other educational materials. Last but not least, the project's success could also be measured by the reduction of crime rate.</p>

<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>None of the project's activities seems to have its application limited to Poland. The methods used are universally applicable in other Member States.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>The project's further activities were based on a thorough diagnosis of needs and resources identified within the system of providing help to crime victims. The diagnosis involved both beneficiaries of help (crime victims and their relatives), as well as stakeholders (e.g. aid centres employees, probation officers). Such approach should guarantee that the practice addresses the problems well and the main goal – increasing the system's efficiency – is achieved.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>N/A</p>

<p>Thematic area</p>	<p>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) Please provide one example of a promising practice of national monitoring bodies (e.g., a well-run outreach campaign, an inclusive survey, a successful effort or initiative to improve legislation, etc.) in relation to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities. Where no such practice exists, please provide one example of a promising practice in relation to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities, focussing on projects and programmes implemented with EU funding.</p>
-----------------------------	--

Title (original language)	No promising practice has been identified for this thematic area.
----------------------------------	---

Annex 2 – Case Law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination against LGBTIQ people or on the grounds of socio-economic status, health status and physical appearance (not related to health or disability or to other grounds like ethnic origin, religion). Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
Decision date	Judgments of the Supreme Administrative Court of 28.06.2022
Reference details	III OSK 3746/21; III OSK 4240/21; III OSK 4041/21 and III OSK 4028/21
Key facts of the case (max. 500 chars)	These judgments - identical in their justification - dismiss cassation to the judgments of regional administrative courts declaring resolutions against gender and LGBT ideology illegal and invalid.
Main reasoning/argumentation (max. 500 chars)	A resolution of a local government is lawful if it is consistent with the provisions of the law. Annulment of the resolution by the court occurs only in the event of a significant violation of the law. The basis for eliminating such an act from legal circulation should be any significant violation of law, regardless of its systemic-legal, substantive-legal or procedural-legal nature. An act of a local government is lawful if it is consistent with the Constitution of the Republic of Poland and with the laws.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The resolutions are acts of the organs of local government subject to review of administrative courts. Moreover, the resolutions against LGBT ideology do not fall within the within the limits of freedom of expression of a public authority - determined by the principle of legalism. The essence of of the message contained in such resolutions is a de facto negation of the equality and anti-discrimination measures undertaken in the public space, as well as the the liberty of those belonging to the LGBT community to exist in this space (if only by preventing them from presenting their demands). Therefore, the overtones of such a declaration are contrary to the constitutional principle of equality before the law and the prohibition of discrimination (Article 32 of the Constitution), as well as Article, 21 (1) of the EU Charter of Fundamental Rights and Article 14 of the ECHR. In addition, it is contrary to the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The judgments of the Regional Administrative Courts repealing the resolutions are upheld as final.</p>
Key quotation in original language and translated into English with reference details (max. 500 chars)	<p>PL (...) społecznym skutkiem uchwały jest naruszenie godności, czci, dobrego imienia oraz - ściśle związanego z tymi dobrami osobistymi - życia prywatnego określonej grupy mieszkańców gminy. (...) Cześć i godność jako wartości właściwe każdemu człowiekowi stanowią jedno z najważniejszych dóbr osobistych człowieka. Obejmują one wszystkie dziedziny jego życia osobistego, zawodowego i społecznego. W kontekście orientacji seksualnej i tożsamości płciowej oznacza to prawo jednostki do swobodnego i otwartego życia w zgodzie z własną orientacją i tożsamością, na równi z jednostkami prowadzącymi heteroseksualne życie prywatne i rodzinne. (...) treści dotyczące wiedzy o życiu seksualnym człowieka nie są przekazane do ustalenia przez lokalnego prawodawcę, lecz są elementem publicznego nauczania regulowanego rozporządzeniem Ministra Edukacji Narodowej (...)- Akt ten nie wymienia nieheteronormatywnych zachowań seksualnych jako nieakceptowalnych, natomiast wskazuje m.in. na konieczność promowania integralnego ujęcia ludzkiej seksualności (...).</p> <p>EN (...) the social effect of the resolution is to violate the dignity, honor, good name and - closely related to these personal rights - the private life of a certain group of residents of the municipality. (...) Honor and dignity, as values inherent in every human being, constitute one of the most important personal goods of a person. They cover all areas of his personal, professional and social life. In the context of sexual orientation and gender identity, this means the right of an individual to live freely and openly in accordance with his or her own orientation and identity, on an equal footing with individuals leading heterosexual private and family lives. (...) the content of knowledge about human sexual life is not delegated to be determined by local lawmakers, but is part of public education regulated by a decree of the Minister of Education (...)- this act does not list non-heteronormative sexual behavior as unacceptable, but points out, among other things, the need to promote an integral view of human sexuality (...).</p>

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide the most relevant <u>high court</u> decision concerning the application of <u>either</u> the Racial Equality Directive or the Framework Decision on racism and xenophobia, addressing racism, xenophobia, and other forms of intolerance more generally.
Decision date	<u>No case law has been identified for this thematic area.</u>

Thematic area	ROMA EQUALITY AND INCLUSION Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.
Decision date	<u>No case law has been identified for this thematic area.</u>

Thematic area	ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION Please provide the most relevant high court decision – or any court ruling – relating to the processing of personal data by new technologies in asylum, migration and border management delivered in 2022 (on Eurodac, SIS and VIS).
Decision date	April 20, 2022
Reference details	Supreme Administrative Court, II OSK 919/21
Key facts of the case (max. 500 chars)	The case concerned a Chinese citizen, the husband of a Polish citizen, whose data as an undesirable person were entered in the Schengen Information System (SIS) until 2024. He applied to the Head of the Office for Foreigners to remove his data from the entry - however, the Head of the Office refused, pointing to a threat to national security. The Head of the Office refused to provide the applicant with the evidence that was the basis for issuing the decision, citing the

	"secret" clause. Re-examining the application in the appeal, the Head upheld his decision - he was also rightly acknowledged by the Voivodship Administrative Court and then the Supreme Administrative Court.
Main reasoning/argumentation (max. 500 chars)	The courts indicated that the party's right of access to the case file - including access to documents that were the basis for entering a person into the SIS and refusing entry to Poland - may be limited in the case of a "secret" or "top secret" clause. The refusal of a party to access documents in such a situation does not constitute an obstacle to a fair examination of the case. Placing on the list of foreigners whose stay on the territory of the Republic of Poland is undesirable does not take place in criminal proceedings and is not governed by such rules as criminal proceedings. The refusal of access was considered justified, necessary and proportionate to the threat posed by the foreigner.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<ul style="list-style-type: none"> • the right of a foreigner to access evidence that is the basis for entering him into the SIS, when some of them have the status of "secret"; • fairness of the procedure for removing an undesirable person from the SIS when he or she does not have access to the case files protected by the "secret" clause; the status of the Head of the Office for Foreigners as a minister within the meaning of the provisions of administrative procedure.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The decision of the Supreme Administrative Court is the basis for limiting the rights of a party in access to files in cases concerning a foreigner who would be a threat to the security of the State, in which the evidence is protected by the "secret" or "top secret" clause. This is important because since the full-scale invasion of Ukraine by Russia, many Russian citizens who have been staying in Poland for many years have been denied, for example, extension of stay, citizenship or deportation decisions. As a basis, they indicate a threat to the security of the state - the statement of which, however, is based on evidence protected by the "secret" clause, to which the party has no access. We are concerned that a similar practice prevents a party from exercising his/her right to defend him/herself.
Key quotation in original language and translated into English with reference details (max. 500 chars)	Ustawodawca niewątpliwie dopuszcza możliwość prowadzenia postępowania w przypadku, gdy część dokumentacji nie może zostać ujawniona stronie. Mając na uwadze powyższe okoliczności należy stwierdzić, że nieprzedstawienie skarżącemu kasacyjnie treści dowodów, na których zarówno organy jak i Sąd oparły swoje rozstrzygnięcie nie świadczy o ich braku czy niezetelności. Należy podkreślić, że są to informacje niejawne, które nie mogą zostać udostępnione skarżącemu kasacyjnie.

	The legislator undoubtedly allows for the possibility of conducting proceedings in the event that part of the documentation cannot be disclosed to the party. Considering the above circumstances, it should be stated that failure to present the complainant with the content of evidence on which both the authorities and the Court based their decision does not prove their lack or unreliability. It should be emphasized that this is classified information that cannot be made available to the complainant in cassation.
--	---

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please provide the most relevant high court decision related to the topics addressed in the chapter (i.e. data protection, and/or artificial intelligence systems).
Decision date	25 May 2022
Reference details	III OSK 2273/21 Supreme Administrative Court
Key facts of the case (max. 500 chars)	<p>The applicant, B.K., submitted an application to his parish regarding the processing of his personal data and their removal. The parish's response was evasive, therefore B.K. appealed to the Data Protection Office. In response, the Office stated that it was not competent to assess the processing of personal data by church institutions and refused to initiate proceedings</p> <p>As a result, B.K. appealed against the DPO's decision to the Provincial Administrative Court. In the complaint, B.K. pointed out that the Church's DPO could supervise the processing of his personal data if the relevant church regulations (Decree of the Polish Bishops' Conference of March 13, 2018) were applied at the time the GDPR entered into force. Meanwhile, this regulations entered into force before the GDPR, which means that this matter should be dealt with by the secular DPO.</p> <p>The Provincial Administrative Court did not agree with the complainant's arguments - the Church Personal Data Protection Inspector as a supervisory body meets the conditions of independence, and the Decree was adopted, approved by the Apostolic See, and then promulgated, all before the GDPR entered into force in Poland.</p>

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Supreme Administrative Court upheld the judgment of the Provincial Administrative Court.</p> <p>As indicated in the justification of the judgment, art. 91 GDPR does not require that the previous rules for the processing of personal data must be codified - therefore there may be customary rules or those resulting from Canon Law.</p> <p>Moreover, as the Supreme Administrative Court pointed out, Art. 52 GDPR does not require an ecclesiastical body to be identical to a secular state body, so it is not true that only a public body can be considered a separate and independent body. The only condition is the existence of an independent body within the meaning of Art. 52 GDPR, although it may be located in the structures of the Church - and these conditions are met by the Church DPO.</p> <p>The adaptation of the Catholic Church to the rules for the processing of personal data resulting from the GDPR was the introduction of the Decree of the Polish Bishops' Conference, the content of which, as a rule, complies with the ordinance of the Church.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Catholic Church may apply its own provisions on the protection of personal data in Poland and that these provisions do not have to be a copy of the GDPR.</p> <p>According to the judgment, the basis of the principles governing data processing are the norms of Canon Law, which define the rules for its collection and use, including keeping of archives, preparation for the sacraments, etc. These rules take into account the specificity of the Church and are detailed enough to meet the condition set out in Art. 91 paragraph. 1 GDPR.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>As is clear from the ruling of the Supreme Administrative Court, complaints related to the processing of personal data by the Church may only be dealt with by the Church Data Protection Inspector without the interference of the DPO. Consequently, the DPO cannot enforce the deletion of data from church books - the competences in this regard lie with the Church Data Protection Inspector.</p>
<p>Key quotation in original language and translated into</p>	<p>'Nie jest zatem tak, jak się stwierdza w skardze kasacyjnej, że w świetle art. 91 ust. 2 RODO odrębnym, niezależnym organem nadzorczym może być uznany wyłącznie organ publiczny, który</p>

English with reference details (max. 500 chars)	<p>spełnia warunki określone w rozdziale VI RODO. Pozostawiona Kościołowi Katolickiemu autonomia w sprawach organizacyjnych, w tym przetwarzania danych osobowych jego członka daje mu również uprawnienie do powołania w ramach własnej struktury organu ochrony danych osobowych,(...) aczkolwiek przyjęte w tym zakresie regulacje prawa wewnętrznego powinny zawierać gwarancje niezależności odpowiadające założeniom przyjętym w art. 52 RODO. Organ nadzorczy może zatem być umiejscowiony w strukturze kościoła (...).'</p> <p>'Therefore, it is not as stated in the cassation appeal that in the scope of art. 91 paragraph. 2 GDPR, only a public body that meets the conditions set out in Chapter VI of the GDPR may be recognized as a separate, independent supervisory authority. The autonomy left to the Catholic Church in organizational matters, including the processing of personal data of its member, also gives it the right to establish a personal data protection authority within its own structure, (...) although the internal law regulations adopted in this regard should contain guarantees of independence corresponding to the assumptions adopted in art. 52 GDPR. The governing body can therefore be situated within the structure of the church (...).'</p>
--	---

Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision for the related topics addressed in the chapter.
Decision date	22 June 2022
Reference details	SK 3/20 Constitutional Court
Key facts of the case (max. 500 chars)	<p>By the decision of the district court of 23 December 2014, as amended by the decision of the district court of 28 April 2015, the contacts between the father and his daughter were regulated.</p> <p>According to the judgement of August 9, 2016, issued at the father's request, the district court threatened the girl's mother with ordering to pay the father PLN 1,500 for each breach of the</p>

	<p>obligation resulting from the above-mentioned contact provisions. This judgment was upheld by the district court by a decision of November 21, 2016.</p> <p>As a result of further failure to comply with the aforementioned obligation, the district court, by a decision of October 3, 2017, ordered the girl's mother to pay her father PLN 14,298.48.</p> <p>However, during the court proceedings, the mother reported that she was not fulfilling her duty as the child did not want to see the father. As proof of this, she presented numerous opinions of psychologists in this regard. The courts did not recognize her arguments because the regulations do not provide for any exceptions.</p> <p>As a result of the above, the child's mother challenged the provisions under which she was awarded payment to her father (art. 598¹⁶ § 1 in connection with art. 598¹⁵ § 1 of the Code of Civil Procedure) to the Constitutional Tribunal, indicating that those provisions are unconstitutional.</p>
Main reasoning/argumentation (max. 500 chars)	The Constitutional Tribunal found the challenged provisions to be partially inconsistent with the Constitution. As indicated in the justification of the judgement, these provisions are inconsistent with the Constitution insofar as they impose financial consequences on the parent under whom the child is cared for on an ongoing basis, regardless of whether the child himself wants to see the other parent.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Punishing a parent for the other parent's lack of contact with their child, when the child himself does not want to contact that parent is inconsistent with the Polish Constitution.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Elimination of art. 598 ¹⁶ § 1 and art. 598 ¹⁵ § 1 of the Code of Civil Procedure from the Polish legal system in the scope described above.
Key quotation in original language and translated into English with reference details (max. 500 chars)	'Nałożenie na rodzica obowiązku zapłaty drugiemu rodzicowi określonej sumy pieniężnej za brak kontaktów z dzieckiem, jest niezgodne z Konstytucją, jeśli brak tych kontaktów wynika z zachowania samego dziecka.'

	'Imposing an obligation on a parent to pay the other parent a certain amount of money for the lack of contact with the child is inconsistent with the Constitution, if the lack of such contacts results from the child's own behavior.'
--	--

Thematic area	ACCESS TO JUSTICE – Victim’s Rights and Judicial Independence Please provide the most relevant high court decision related topics addressed in the chapter (i.e the Victim’s Rights Directive, the EU Strategy for Victim’s Rights and violence against women).
Decision date	29 June 2022
Reference details	Judgement of the Supreme Court, case no. III KK 202/21
Key facts of the case (max. 500 chars)	<p>In 2020, M.L. was convicted for committing a series of rapes to the detriment of a minor. The judgement was upheld, as regards conviction, by a court of the second instance.</p> <p>The defendant filed a cassation appeal to the Supreme Court against this judgement. He indicated, among others, that his right to defence had been violated by not granting his motion for a renewed questioning of the victim. In particular, he emphasised that he had no possibility of participating in the questioning, whereas the court’s factual findings were based on the victim’s depositions.</p> <p>According to Article 185c(1a) the Code of Criminal Procedure, in cases concerning certain criminal offences against sexual liberty, a victim who at the moment of questioning is over 15 years of age shall be questioned in the capacity of a witness only where their testimony could be of material importance to the resolution of the case, and only once, unless significant circumstances are revealed whose clarification necessitates a repeated questioning. A defence counsel (not the defendant in person) is entitled to take part in the questioning.</p>
Main reasoning/argumentation	The majority of factual findings in this case was made on the basis of the victim’s depositions provided during the investigation (in preparatory proceedings). The police, however, did not enable

<p>(max. 500 chars)</p>	<p>the defence's presence during the questioning of the victim, even though the suspect could be identified at this stage of the proceedings with ease.</p> <p>The principle of immediacy requires authorities conducting criminal proceedings to take evidence during a hearing in court proceedings. Only by way of exception evidence taken outside the court (e.g. in preparatory proceedings) can be transferred to court proceedings, provided that additional conditions are met. The most fundamental condition is safeguarding the right to defence, which is expressed in the possibility to ask the victim questions aimed at challenging the depositions' credibility by the defendant's attorney.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Article 185c was introduced to protect the victim of crime against sexual liberty from any excessive traumatising during criminal proceedings. However, its scope of application should be interpreted restrictively since the provision is of exceptional nature.</p> <p>Unless the defence counsel is able to take part in the questioning, the protection of the victim becomes inferior to the accused's right to defence and the victim's depositions cannot be regarded as evidence taken in a fair procedure.</p> <p>"Defence counsel" should be interpreted broadly and include also a representative of a person who has not yet acquired the suspect's status.</p> <p>The defendant's depositions contradicting the victim's depositions justify questioning the victim again, if the latter were taken in a questioning without the defence counsel's presence and where the factual findings are based mainly on them.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The judgement of the court of the second instance was repealed and the case was referred back for re-examination.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>PL: Ograniczenie przeprowadzenia dowodu z zeznań osoby pokrzywdzonej określone w art. 185c k.p.k. i traktowanie tego dowodu na równi z tymi dowodami, które były przeprowadzone na rozprawie, możliwe jest wówczas, gdy spełnione są wszystkie warunki określone w tym przepisie, w tym w szczególności, gdy zagwarantowano obronie obecność w czasie przeprowadzenia tego dowodu. Jeżeli ten warunek nie został spełniony, to brak jest możliwości odwoływania się do tego przepisu,</p>

	<p>jako przeszkody dla ponownego przesłuchania pokrzywdzonego, chyba że zachodzą inne przyczyny wykluczające takie przesłuchanie. Wniosek o przesłuchanie pokrzywdzonego w charakterze świadka na rozprawie należy w takim wypadku ocenić według standardów określonych w art. 170 k.p.k., jak każdy inny wniosek dowodowy.</p> <p>EN: The limitation of taking evidence – the victim’s depositions – established under Article 185c of the Code of Criminal Procedure and treating it identically as other pieces of evidence taken during the hearing is possible only when all conditions provided are fulfilled, in particular when the defence’s presence is guaranteed. If the last condition is not fulfilled, invoking this provision as an obstacle to questioning the victim again in the proceedings is impossible, unless there are other reasons excluding such questioning. A motion for questioning the victim in the capacity of a witness during a hearing should be assessed pursuant to standards set in Article 170 CPC, as any other motion for evidence.</p>
--	--

Thematic area	DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) Please provide the most relevant High Court decision, which quoted the CRPD or prominently referred to the CRPD in the reasoning.
Decision date	7 February 2022
Reference details	Decision of the Appellate Court in Poznań, case no. I ACa 855/19
Key facts of the case (max. 500 chars)	The case originated in 2018 with a motion for full incapacitation of S.J. lodged in court by her sister. The applicant indicated that since 2013 her sister had been unable to manage basic activities of daily living, reasonably assess the reality and guide her conduct. In 2019, the court partially incapacitated S.J., having found, on the basis of a psychiatric-psychological opinion, that she suffers from paranoid syndrome.

	<p>According to Article 16(1) of the Civil Code, partial incapacitation is applied when (cumulatively): 1) a person suffers from mental disorder; 2) help in handling matters is needed; 3) there is no need for full incapacitation. In any case, incapacitation should be applied only for the benefit of the incapacitated.</p> <p>S.J. appealed against the decision, indicating wrongful interpretation of Article 16(1) and selective assessment of evidence.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Appellate Court in Poznań has observed, first, that – in the view of medical examination in 2021 – the current state of S.J.’s health, in particular her continuous and successful therapy, does not justify her incapacitation.</p> <p>The court went on to indicate that incapacitation in this case was not applied for the benefit of the incapacitated. Even if such benefit occurred, it would be ruined by the burdens of incapacitation, in particular by the limitation of the capacity to perform legal acts and the lack of the right to vote.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court’s argumentation revolved around the notion that the modern approach to persons with disabilities, including persons suffering from mental disorders, foresees enabling them to function in the society on equal terms with healthy persons.</p> <p>The court has clarified in particular that:</p> <ul style="list-style-type: none"> • provisions enabling incapacitation (full or partial) should be applied restrictively and only for the benefit of the incapacitated; • it is not allowed to prefer the comfort of family members or institutions over the benefit of the person to be incapacitated; • the benefit of the person should always be balanced against the burdens related inherently to incapacitation.
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court reversed the ruling of the first instance court and dismissed the motion for incapacitation of S.J.</p>
<p>Key quotation in original language and translated into</p>	<p>PL:</p>

English with reference details (max. 500 chars)	<p>Szczególnie akcentuje się konieczność zachowania pełni uprawnień tych osób (osób z niepełnosprawnościami, w tym cierpiących na schorzenia natury psychicznej – red.) w sferze obrotu prawnego oraz praw politycznych, przede wszystkim wyborczych (por. art. 12 Konwencji ONZ o prawach osób niepełnosprawnych, Dz. U. 2012.1169).</p> <p>W tej sytuacji szczególnie ostrożnie należy podchodzić do stosowania instytucji ubezwłasnowolnienia, która w prawie polskim skonstruowana została w sposób mało elastyczny, w znacznej części pozostając w sprzeczności z dominującymi tendencjami w prawie międzynarodowym i przyjętymi tam standardami postępowania z osobami niepełnosprawnymi, w tym z uwagi na zaburzenia psychiczne (...).</p> <p>EN: The need for retaining full powers by these persons (persons with disabilities, including those suffering from mental illnesses – ed.) is particularly emphasised in the field of legal transactions and political rights, in particular electoral rights (see Article 12 CRPD).</p> <p>In this situation incapacitation should be applied especially carefully, as it has been shaped under Polish law in an inflexible manner, to a great extent in contradiction to dominant trends in international law and standards of dealing with persons with disabilities, including those mentally ill (...).</p>
--	---