

# TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT

## UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Poland, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Poland, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

## POLAND REVIEW

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### Justice System

#### ➤ *Independence*

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights noted that changing the rules governing the appointment and dismissal of judges had eroded the rule of law and the system of checks and balances in Poland. Respect for the Constitution and safeguarding of the independence of the judiciary, which ensured its implementation, were among the most important steps that must be taken to secure human rights. Many individuals facing violations of their cultural rights had indicated that the independence of the judiciary and the strength of the court system represented their best hope for justice and protection against abuse. The expert referred the Government to the recommendations of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland and stressed the importance of their full and timely implementation ([A/HRC/43/50/Add.1](#), para 17)

In 2019, the UN Special Rapporteur on the independence of judges and lawyers initiated a dialogue regarding Justice Alina Czubieniak, who had been subject to disciplinary proceedings and sanctions as a consequence of a decision she took in the legitimate exercise of her judicial functions. The disciplinary proceedings initiated against the judge followed the exercise of her freedom of expression. ([POL 3/2019](#), available at:

<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

In February 2020, the UN High Commissioner for Human Rights expressed concern at legislation which passed into law in Poland that month that risked further jeopardizing the independence of the judiciary in the country, restricting the rights of judges and the impartiality of courts of law. Under the new legislation, she noted, judges who questioned the Government's planned judicial reforms could be fined or even dismissed. (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25523&LangID=E>)

In her global update to the Human Rights Council in February 2020, the UN High Commissioner for Human Rights expressed concern about adopted legislation curtailing the independence of judges and lawyers; enabling the dismissal of judges; and levying severe penalties against prosecutors, lawyers and judges critical of the Government's judicial changes. There had been sharp increases in disciplinary proceedings against judges, and numerous lawsuits against journalists and media outlets not affiliated to the government. In his global update to the Human Rights Council in March 2018, the UN High Commissioner had also expressed concern about reforms in previous years targeting the Constitutional Court and the judiciary, severely weakening checks and balances, politicising the Office of the Prosecutor General, increasing the powers of the secret services, and leading to a significant strengthening of executive control over the judiciary, the media, civil society, and other spheres of public life. The High Commissioner had called on the Government to reverse or amend these measures, and to implement the recommendations of UN Special Rapporteur on the independence of judges and lawyers.

(<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25621&LangID=E> and <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E>).

In its 2019 concluding observations, the UN Committee against Torture expressed concern about Poland's judicial reforms, including at the Constitutional Tribunal, which hampered the constitutionally protected principle of judicial independence and enabled legislative and executive interference with the administration of justice, as noted in the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland ([A/HRC/38/38/Add.1](#)). The Committee recommended that Poland review the ongoing judicial reform to ensure that it complies with international standards of independence of the judiciary, principles of rule of law and separation of powers and Poland's Constitution (See [CAT/C/POL/CO/7](#), para 9-10).

In its 2019 concluding observations, the UN Committee on the Elimination of Racial Discrimination expressed concern about the changes to the institutional framework made since 2015, which may jeopardize the independence of the judiciary and National Public Prosecutor, raising concerns about the integrity of the legal enforcement of equality guarantees. The Committee recommended to take effective steps to guarantee the independence of the judiciary and the National Public Prosecutor from political interference. (See [CERD/C/POL/CO/22-24](#), para 11-12).

➤ **Quality of justice**

In the 2020 report following its visit to Poland, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) was concerned that many detainees its delegation spoke to had not had the chance to consult a lawyer, especially in the first stage of proceedings. The Subcommittee was further concerned at the lack of an appropriate system of legal aid in Poland for those who could not afford a private lawyer. It recommended that Poland take effective measures to guarantee that all persons deprived of their liberty are afforded, in law and in practice, from the time they are arrested, the right to have prompt access to an independent lawyer and, if necessary, to legal aid in accordance with international standards. ([CAT/OP/POL/RONPM/1](#), para 51, 52).

In the 2019 report following its visit to Poland, the Working Group on the issue of discrimination against women in law and in practice noted that the dismissal of cases of gender-based violence and the often lenient punishment for perpetrators were not conducive to the pursuit of justice and are one of the reasons for the withdrawal of complaints by victims/survivors. Building the trust of victims/survivors in the system was essential for the success of efforts to combat gender-based violence against women. The Working Group recommended to improve services for victims/survivors of gender-based violence and their access to justice, in particular women in vulnerable situations. (See [A/HRC/41/33/Add.2](#), para 78, 87).

In its 2018 concluding observations, the UN Committee on the Rights of Persons with Disabilities was concerned that persons with psychosocial or intellectual disabilities deprived of their legal capacity were denied the right to take part in litigation and to stand as witnesses in procedures before civil courts. It was also concerned about the barriers that persons with disabilities in general faced in their access to justice owing inter alia to a lack of: procedural accommodation and use of appropriate language and other means, modes and formats of communication in legal proceedings; physical accessibility of justice buildings, courts and tribunals; human rights-based knowledge of the justice system and law enforcement on the rights of persons with disabilities; legal assistance for persons with disabilities, including legal assistance and procedural accommodation for persons with psychosocial disabilities. The Committee recommended that Poland guarantee persons with intellectual and/or psychosocial disabilities deprived of their legal capacity equal and supported access to all judicial processes. (See [CRPD/C/POL/CO/1](#), para 21, 22).

In its 2019 concluding observations, the UN Committee on the Elimination of Racial Discrimination recommended to strengthen the training of judicial officials on the provisions of the Convention and provide detailed examples of cases of racial discrimination decided by judicial and other relevant complaint mechanisms. (See [CERD/C/POL/CO/22-24](#), para 8).

The UN Committee against Torture in its 2019 concluding observations urged Poland to provide training to judges and prosecutors in order to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of confessions obtained under torture. It also recommended to ensure that all law enforcement officers, civilian judges, military judges and public prosecutors receive mandatory training emphasizing the link between non-

coercive interrogation techniques, the prohibition of torture and ill-treatment and the obligation of the judiciary to invalidate confessions made under torture. It further recommended that Poland provide mandatory and continuous training on trafficking to all justice and law enforcement personnel and systematically monitor and evaluate the impact of measures against trafficking and compile data on investigations, prosecutions and punishments against traffickers. (See [CAT/C/POL/CO/7](#), para 10, 28 and 38).

In the 2019 report following its visit to Poland, the UN Working Group on the issue of discrimination against women in law and in practice noted the positive changes in attitudes among law enforcement personnel and judicial actors and of various training courses. However, there was a need to review the content of training and education programmes to ensure greater understanding by justice officials of women's barriers to access to justice, including those at the legal, institutional, structural, socioeconomic and cultural levels, and making gender-based violence against women an explicit and integral part of the curriculum, occupying a dedicated space. (See [A/HRC/41/33/Add.2](#), para 67 and 87f).

In its 2018 Concluding observations, the UN Committee on the Rights of Persons with Disabilities recommended that the State party provide training to professionals, including judges and law enforcement officials, to raise their awareness of the rights under the Convention on the Rights of Persons with Disabilities. (See [CRPD/C/POL/CO/1](#), para 6e).

➤ ***Efficiency of the justice system***

In the 2020 report following its visit to Poland, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) noted that although the Criminal Procedure Code prescribes the maximum legal durations for pretrial detention, a number of detainees interviewed by the delegation complained that the length of their detention on remand lasted for excessive amounts of time, in some cases more than one year. The Subcommittee recalled that detention in custody of persons awaiting trial should be the exception rather than the rule. It recommended that Poland take measures to ensure that pretrial detention policy meets international standards, namely that the recourse to detention is always the measure of last resort. It further recommended that Poland consider further increasing the use of alternative measures to pretrial detention and ensure that the mechanism for reviewing detention decisions is effective. ([CAT/OP/POL/ROPNM/1](#), para 78,79).

➤ ***Other***

The UN Committee on the Rights of Persons with Disabilities in its 2019 concluding observations called upon to repeal all discriminatory provisions under the Civil Code and other legal acts allowing for the deprivation of legal capacity of persons with disabilities. It was also recommended that Poland establish a procedure aimed at restoring the full legal capacity of all persons with disabilities, and develop supported decision-making mechanisms that respect their autonomy, will and preferences ([CRPD/C/POL/CO/1](#), para 20).

The UN Committee on the Elimination of Racial Discrimination in its 2019 concluding observations was concerned about the extremely low percentage of offences of hate speech and hate crimes that were reported, despite the recorded increase in the incidence of such

crimes; that some of the reported racially motivated crimes remained unregistered and not investigated as such; that the increased number of preparatory proceedings and indictments of perpetrators of racist crimes did not result in a significant increase in the number of convictions and about the lack of detailed information on investigations and prosecutions of, and convictions for, racist hate speech and hate crimes. The Committee recommended that Poland take measures to encourage and facilitate the reporting of hate speech and hate crimes by ensuring the registration of all reported cases, effective investigations and prosecutions, and the imposition of appropriate penalties on perpetrators; and also provide detailed information on investigations and prosecutions of, and convictions for, such crimes ([CERD/C/POL/CO/22-24](#), para 19-20).

The UN Committee against Torture in its 2019 concluding observations urged Poland to take effective measures to guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty and take effective steps to ensure that all detained persons have prompt access to legal assistance, including on-duty attorneys and legal advisers provided by State-funded legal aid, before their initial interrogation. The Committee was concerned about the low number of conclusive prosecutions of alleged acts of torture of persons deprived of their liberty and about the discrepancy between the number of complaints submitted by victims of torture and ill-treatment and the number of sentences handed down, despite the issuance by the Prosecutor General of guidelines regarding crimes related to the deprivation of life or inhuman or degrading treatment and punishment where the perpetrator is a police officer or other public official. The Committee also added that the merging of the functions of Minister of Justice and Prosecutor General might have a negative effect regarding investigations into violations of the Convention ([CAT/C/POL/CO/7](#), para 16, 31).

## **Media pluralism**

### **➤ *Media authorities and bodies***

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights noted that legal safeguards for diversity and pluralism in the media landscape, coherent with international human rights law obligations, had been undermined by legislative amendments in 2015. Article 21 of the Broadcasting Act stipulates that public radio and television should be pluralistic, impartial, well balanced and independent. Article 2 of the Press Act clearly states that State bodies have an obligation to create the necessary conditions for a diversity of press outlets, programming, subjects and attitudes to be present and accessible in the public realm. However, in 2015, the laws amending the Broadcasting Act temporarily placed the power to appoint and dismiss the management and supervisory boards of the public service broadcasters in the hands of the Minister of State Treasury, which substantially eroded the independence of public broadcasters and led to a large wave of dismissals of public media staff, especially those working in management, editorial functions and foreign news. This trend of greater government control of the public media, which was contrary to constitutional and legislative dispositions, had been widely reported as problematic. The Special Rapporteur noted that the argument of the public media authorities that private media

mainly presents other views than those of the Government did not justify predominant coverage of the views of the ruling party in public media. It was the responsibility of public media to ensure impartiality, to guard against political pressure and to provide space for a healthy, democratic debate accessible to all. In addition, the Special Rapporteur noted that proposed measures to limit the shares of foreign capital in the media landscape would disproportionately affect media outlets that are critical of the current government. ([A/HRC/43/50/Add.1](#), para 28-30)

## **Other institutional issues related to checks and balances**

### **➤ *The process for preparing and enacting laws***

In 2019, during a press briefing on Poland, the Spokesperson for the UN High Commissioner for Human Rights urged the Polish Government and the members of the Parliament (Sejm) to consider carefully the potential impact of the draft legislation on the rule of law submitted on 12 December 2019. It was noted that some amendments, proposed by the ruling party, were apparently provided to the draft law overnight.

(<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25447&LangID=E>)

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights noted that article 9 of the Constitution requires Poland to respect international law binding upon it. In practice, more needed to be done to systematically and effectively implement such international standards. One particular area of difficulty was regular and transparent consultation with experts and civil society organizations on policy ideas, and the tendency to introduce and pass legislation rapidly, with little opportunity for debate or amendment. ([A/HRC/43/50/Add.1](#), para 8).

### **➤ *Independent authorities***

In its 2020 report following its visit to Poland, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) noted the designation of the ombudsman office as Poland's national preventive mechanism had not been followed by the allocation of appropriate additional resources to fulfil this additional mandate. It also noted the mandate of the mechanism was not clearly separated from the rest of the ombudsman's mandate and there were no explicit provisions in the mechanism legislation regarding earmarked funding or donations. The SPT made many recommendations to strengthen the office's human and financial resources, mandate and visibility ([CAT/OP/POL/RONPM/1](#), para 16-32). Similar concerns and recommendations were raised by the UN Committee against Torture in its 2019 concluding observations. The Committee was also concerned about personal attacks against the Human Rights Commissioner in 2019, noting he had been called upon to resign by one of the Deputy Ministers of Justice, potentially as reprisals for engaging with the Committee ([CAT/C/POL/CO/7](#), para 23, 24). In his 2019 report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights the UN Secretary-General noted that that the national human rights

institution of Poland and the Commissioner on Human Rights had been subject to acts of intimidation and reprisals ([A/HRC/42/30](#), para 72).

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights expressed concern that, since 2015, the Commissioner for Human Rights and his office had been facing increasing governmental pressure, including through attempts to strip his immunity and impose budget cuts. The pressure was unacceptable and incompatible with the Paris and Venice Principles. The Special Rapporteur called upon the authorities to respect the Commissioner's independence and to ensure the institution's ability to effectively fulfil its mandate, including through more funding. The UN expert saluted the vital work of the Commissioner and his staff ([A/HRC/43/50/Add.1](#) para 15).

In its 2019 concluding observations, the UN Committee on the Elimination of Racial Discrimination was concerned about the Commissioner's insufficient human and financial resources, in particular for its Equal Treatment Department. Also, the Commissioner had no statutory mandate to investigate racial discrimination complaints in the private sector. The Committee recommended to provide the human and financial resources necessary to fully discharge its mandates in an independent and impartial manner ([CERD/C/POL/CO/22-24](#) para 9-10).

In 2019, several Special Procedures mandate-holders initiated a dialogue with Poland expressing serious concerns regarding the civil action brought by Polish public broadcaster TVP against Mr Bodnar, in his personal capacity, for statements made in his professional capacity as Commissioner ([POL 1/2019](#)).

In its 2018 concluding observations, the UN Committee on the Rights of Persons with Disabilities called for adequate legal bases and sufficient resources and funding to the Human Rights Commissioner's Office as the national body mandated under the Disability Convention, to allow it to discharge its mandate effectively and independently ([CRPD/C/POL/CO/1](#) Para 56).

➤ ***Accessibility and judicial review of administrative decisions***

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights noted that the rules and processes for submitting requests for government grants were for the most part available on the Internet and easily accessible and, except for a small number of targeted programmes, the vast majority of grants seemed to be open to all types of applicants and organizations. However, concerns had been expressed by various sources about the lack of transparency regarding the attribution of points in the evaluation of projects, especially those attributed for consistency with the strategic goals. There was a need to both clarify the general and strategic goals of grants and provide more detailed explanations for the scores attributed by the experts involved. Also, the Ministry was involved in selecting both the experts who assess project proposals and the directors of national cultural institutions, and the programmes of these institutions were subject to the approval of the Minister, which implied a rather large influence on programming. For the directors and staff of cultural institutions, the fact that some members of the ruling party had not agreed with their artistic and cultural choices had translated into repeated criticism in public media

and, sometimes, into prosecutions and investigations. In some particular cases, this had even led to dismissals ([A/HRC/43/50/Add.1](#) para 20, 23).

➤ ***The enabling framework for civil society***

In the 2020 report following her visit to Poland, the UN Special Rapporteur in the field of cultural rights noted she had received mixed reports regarding the space available for Polish civil society action, which is important for securing cultural rights. On the one hand, demonstrations were regularly organized by a variety of actors and the Special Rapporteur was told that protection granted to participants by police forces was sometimes good, including in the case of equality marches where participants sometimes felt safe. On the other hand, there were shocking reports about the failure of police forces to protect peaceful demonstrators against violent physical attacks and about abuses by the police forces themselves, as well as lack of legal remedies from the prosecutor's office in cases of abuse. One worrying example concerned the reported intrusive body searches of female demonstrators arrested for trying to stop the logging of the forest of Białowieża, a World Heritage site. The Special Rapporteur noted that the right to freedom of assembly was generally respected in law and in practice but that, in recent years, protesters had increasingly risked surveillance, intimidation, physical attacks by counter protesters and sometimes even the use of force by the authorities, arrest and prosecution for their activities ([A/HRC/43/50/Add.1](#), para 83, 84).

In the 2019 report following its visit to Poland, the Working Group on the issue of discrimination against women in law and in practice recommended to use the valuable knowledge and experiences of women's rights organizations. Not only should they receive the appropriate funding, their voices must be heard in the formulation of government policies and strategies. International and regional support should also prioritize women's rights organizations in the current context of the shrinking space for civil society organizations. ([A/HRC/41/33/Add.2](#), para 28)

The Committee on the Rights of Persons with Disabilities in its 2018 concluding observations called upon Poland to ensure the comprehensive and effective involvement of organizations of persons with disabilities in monitoring tasks under the Convention, and provide them with the funding necessary for that purpose ([CRPD/C/POL/CO/1](#), para 56c).

In 2018, several Special Procedures mandate-holders initiated a dialogue with Poland citing concerns about a new safety and security law written specifically for the UN Framework Convention on Climate Change (COP24) in Poland, that could hamper civil society's involvement in the climate talks. Later in the year, they also exchanged with Poland citing concerns about the judicial harassment of the Polish non-governmental organisation, the Open Dialog Foundation, working on the protection and promotion of human rights, democracy and rule of law in the post-Soviet area, and about the treatment of its President. ([POL 3/2018](#), [POL 4/2018](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).