

Franet National contribution to the Fundamental Rights Report 2021

Poland

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Policy and legal highlights 2020

POLAND

Franet country study: policy and legal highlights 2020	
Issues in the fundamental rights institutional landscape	Independence of the judiciary. The Parliament adopted the “muzzle law” that tightened up the disciplinary regime for judges. The law was a response to the CJEU and the Supreme Court's decisions, setting the guidelines for national courts to assess the status of new judges appointed by the National Council of the Judiciary (the NCJ). The “muzzle law” introduced a disciplinary offence of “questioning the status of judges”.
EU Charter of Fundamental Rights	The right to an effective remedy and fair trial. The principle of judicial independence was invoked in the resolution of the combined chambers of the Supreme Court of 23 January 2020 , in which the Court found that a court panel could be considered unduly appointed or unlawful, where it includes a person appointed as a judge by the NCJ. Therefore, the participation of such a judge in delivering a ruling might, under certain circumstances, give grounds to question such a ruling.
Equality and non-discrimination	LGBT free zones. The lack of specific anti-discrimination laws for LGBTI people in connection with the officially adopted government strategy to contain the “LGBT ideology” makes the situation of sexual minorities particularly vulnerable. While several dozen local governments declared LGBT-free zones , regional administrative courts quashed the LGBT-free-zone resolutions only in four cases. The controversy regarding the status of these resolutions is currently pending before the Supreme Administrative Court.
Racism, xenophobia & Roma integration	COVID-19 and the rise of racism. The outbreak of COVID-19 has fuelled the rise of racism and xenophobia. A civil society organisation, the Never Again Association, reported on 15 cases of unequal treatment, insults and violence that could be directly linked to the outbreak of the pandemic , in addition to discriminatory statements issued by public figures, politicians and journalists.
Asylum & migration	Access to asylum. In <i>M.K. and others v. Poland</i> , the ECtHR found that repeated refusals by Polish border authorities to review asylum applications violated procedural obligations, while the removal to a third country subjected the applicants to a serious risk of <i>chain-refoulement</i> . The Court held also that the removals amounted to collective expulsion against which the applicants did not have any effective remedy. It therefore found a violation of Article 13 in conjunction with Article 3 and Article 4 Protocol No. 4 to the Convention.
Data protection and digital society	The Presidential elections. In the course of organising the Presidential elections in May 2020, Parliament authorised voting by post to limit the spread of the pandemic. To this aim, the Minister of Digitalisation and Technology transferred personal data of voters to the Postal Service,

	which raised significant concerns regarding the lack of sufficient guarantees for data protection.
Rights of the child	Draft Act on juveniles. The Ministry of Justice continued the work on a draft Act on juveniles . The Act will thoroughly regulate the status of minors who committed a crime, judicial proceedings concerning juvenile delinquency and the structure of juvenile detention centres.
Access to justice, including victims of crime	Anti-violence package. The Parliament adopted a law amending and expediting the procedures for the protection of victims of domestic violence , and empowering police officers to issue barring orders. The aim of the law is to isolate the perpetrator from the victim of violence as soon as possible.
Convention on the Rights of Persons with Disability	Work on the strategy for persons with disabilities. The government presented the draft "Strategy for persons with disabilities" for social consultations. The strategy concentrates on six areas: independent living, accessibility, education, work, social security, health and awareness building. The strategy establishes a national system of coordination of works for the persons with disabilities. The lack of such a strategic coordination centre was indicated by the CRPD Committee in its concluding observations on Poland in 2018.

Chapter 1. Equality and non-discrimination

1. Legal and policy developments or measures relevant to fostering equality and combating discrimination against older people and against LGBTI people.

Limited scope of Polish anti-discrimination law. The law prohibiting discrimination against LGBT people in Poland merely implements the provisions of the Framework Equality Directive, which covers exclusively employment and occupation. Therefore, discrimination with regard to sexual orientation is not explicitly prohibited in the area of education, social protection, health care, and access to goods and services. Moreover, the lack of explicit prohibition of discrimination based on gender identity makes the status of transgender persons as potential victims even more vulnerable. It is clear that the general protection of civil law may not be sufficient to offer efficient protection to victims of discrimination with regard to sexual orientation or gender identity. In the absence of specific criminal laws, the police and prosecutor's office do not practically investigate homo- or transphobic motives of crimes and discontinue the investigation or prosecution of hate crimes against the LGBT people due to the absence of the constituent elements of a crime. Furthermore, the lack statutory laws regulating the procedure for gender recognition for transgender persons or

the situation of intersexual persons, prohibiting conversion therapies, introducing same-sex partnerships, and providing protection for children of same-sex parents in cross-border situations remain the main issues of concern.

In the view of the EU “LGBTIQ Equality Strategy 2020-2025”, it remains to be seen whether the future “National Action Plan for Equal Treatment for 2021-2030”, which is in the hands of the Government Plenipotentiary for Equal Treatment, will recognise and duly implement the principle of equality with regard to sexual orientation and gender identity (on equal footing with other protected characteristics).¹

“LGBT Free Zones”. The most controversial aspect of LGBTI protection in Poland in 2020 concerned the status and political consequences of resolutions adopted by local councils at various levels of local self-government (voivodship, county, municipality), recognizing their jurisdiction as a zone free of LGBT ideology.² In other cases, local councils voted, but rejected the adoption of such resolutions, or attempted to present such resolutions for voting.³ The resolutions and similarly formulated charters of family rights respond to the LGBT Declaration signed by the mayor of Warsaw, Rafał Trzaskowski. They call for the protection of traditional Christian values and the family, claiming that non-interference in the private sphere of Polish families requires the condemnation of an ideology based on equality of all humans. In some cases, the resolutions call for opposition to the propaganda of homosexuality and sexualisation of children, which allegedly results from the promotion of LGBT rights.

The main legal controversy concerns the question whether such resolutions have a normative value, and whether as such they can be challenged in courts.⁴ While some regional administrative courts recognized that the LGBT-free-zone resolutions are acts of local self-government concerning public administration matters, contain elements of public authority and should be subject to judicial review, other courts found that complaints against such resolutions are

¹ Letter from the Ombudsman to the Government Plenipotentiary for Equal Treatment, 16.11.2020, <https://www.rpo.gov.pl/pl/content/rpo-nalezy-poprawic-sytuacje-osob-lgbtig>

² In October 2020 63 cities/municipalities, counties and voivodships declared themselves as free from the LGBT ideology, while 17 adopted the Charter of the Rights of Family. See https://mnw.org.pl/uchwaly_przeciwko_ideologii_lgbt/

³ Poland, Atlas Nienawiści, available at: <https://atlasnienawisci.pl/>

⁴ The former interpretation is supported by the Polish Ombudsman and the Campaign Against Homophobia who actively challenged the resolutions in courts, but it is opposed by the Public Prosecutor’s Office and the Ordo Iuris Institute joining such proceedings.

inadmissible.⁵ Since the Ombudsman appealed against decisions rejecting the complaints as inadmissible,⁶ the final resolution of this controversy is pending before the Supreme Administrative Court. As of October 2020, four resolutions declaring a LGBT Free Zone were quashed as invalid.⁷

The LGBT-free-zone resolutions were strongly condemned by the Polish Ombudsman, the Campaign against Homophobia, the European Commission, and the European Parliament.⁸ In May 2020, the European Commission addressed five marshals of the voivodships on the responsibility of the managing authorities and beneficiaries of EU cohesion policy funds to comply with the principle of non-discrimination based on sexual orientation and gender identity.⁹ In July 2020, the European Commission took decision to reject applications for grants under the twinning programme of the Europe for Citizens project for six Polish cities, which adopted the LGBT-free-zone resolution. In response, the Polish Minister of Justice considered this decision as an act of persecution of national values and granted the city of Tuchów 250,000 PLN to compensate the loss of EU funding.¹⁰ It is worth noting that the government derived these funds from the Justice Fund dedicated to victims of crimes and post-penitentiary assistance.

Lack of effective provisions banning hate speech towards the LGBT community. In the reported period, the scale of hate speech against the LGBT community increased in the public media and public life.¹¹ Moreover, public authorities, including the prosecution's office, have repeatedly demonstrated leniency towards homophobic acts. While hate speech regarding sexual orientation

⁵ See i.e. decision of the Regional Administrative Court in Rzeszów of 8.09.2020, Case no. II SA/Rz 27/20.

⁶ Poland, Ombudsman's office, RPO zaskarżył decyzje sądu administracyjnego o odrzuceniu skarg na uchwały „anty-LGBT”, available at: <https://www.rpo.gov.pl/pl/content/rpo-zaskarzynyl-decyzje-wsa-o-odrzuceniu-skarg-na-uchwaly-anty-lgbt>

⁷ See ie. judgment of the Regional Administrative Court in Gliwice of 14.07.2020, Case no. III SA/GI 15/20, finding that the resolution of the local council in Istebna is unlawful and thus invalid since it is adopted without a legal basis and excludes LGBT people from the local community.

⁸ European Parliament, Parliament strongly condemns “LGBTI-free zones” in Poland, available at: <https://www.europarl.europa.eu/news/en/press-room/20191212IPR68923/parliament-strongly-condemns-lgbti-free-zones-in-poland>

⁹ European Commission, Directorate General for Employment, Social Affairs and Inclusion, available at: https://archiwumosiatsynskiego.pl/images/2020/06/2020-Letter-from-EMPL-and-REGIO_LGBT_COVID.docx.pdf

¹⁰ Pankowska M., Ziobro daje gminie „wolnej od LGBT” ćwierć miliona złotych. Bo „UE prześladowuje Tuchów”, Oko.press, available at: <https://oko.press/ziobro-dal-gminie-wolnej-od-lgbt-250-tys-z-funduszu-sprawiedliwosci/>

¹¹ Ilga Europe, Annual Review. 2020, available at: https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf

and gender identity does not constitute an offence under the Criminal Code, and the police or public prosecutors tend to discontinue proceedings in such cases, such acts should be prosecuted as public insult.¹² At the same time, public authorities make decisions that disproportionately sanction LGBT activists who oppose homophobic hate speech. The anti-LGBT attitude of the police, the prosecutor's office and some courts could be demonstrated on the case of Margot. Margot is a non-binary activist in the "Stop Bullshit" group, which fights with disinformation campaigns aimed at the LGBT community (such as "Stop Paedophilia").¹³ She was arrested on August 6, 2020 in connection with a suspected damage to a van carrying homophobic content¹⁴ and an attack on its driver. The attack on the driver was recorded, so there is little rights of obstruction of justice. When the court decided to arrest her, a mass manifestation gathered in Warsaw to protest against this decision. In reaction, the manifestation met with exceptional brutality of the police who used violence against the demonstrators, including journalists, MPs and politicians, and detained 50 persons, including persons who did not participate in the manifestation. In the view of over 40 civic organizations including the Amnesty International or the Helsinki Foundation of Human Rights, signing a letter of support and solidarity with the detained persons, the police action was disproportionate and unjustified.¹⁵ In the report published by the Ombudsman, within the National Mechanism of Torture Prevention, the treatment of people detained by the police on August 7, 2020 in Warsaw after the arrest of the activist of the "Stop Bullshit" group was degrading.¹⁶

In May 2020, the Ombudsman requested the government and the President of the National Broadcasting Council to amend the law on radio and television and include the explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in the content of broadcasting. Currently, such prohibition applies

¹² Poland, Ombudsman's Office, Homofobiczny napis na murze domu w Warszawie. RPO pyta prokuraturę, available at: <https://www.rpo.gov.pl/pl/content/rpo-pyta-prokurature-homofobiczny-napis-na-murze-domu-w-warszawie>

¹³ Dryjańska A., Kim jest Margot, o co chodzi z furgonetką i dlaczego interweniowała policja? 7 ważnych wątków, available at: <https://natemat.pl/317255,kim-jest-margot-dlaczego-policja-tlumila-zamieszki-lgbt-w-warszawie#>

¹⁴ Such a picture of two naked men carrying a rainbow flag with messages: "Pederascists live on average 20 years shorter", "Pedophilic acts occur 20 times more often among homosexuals", "They want to educate your children. Stop them", "70 percent of AIDS-related behavior affects pederasts", "91 percent of children raised by lesbians and 25 percent of those raised by pederasts are harassed". See further <https://oko.press/homofobiczne-furgonetki-jezdza-po-polsce-jakim-prawem-analiza-oko-press/>

¹⁵ Poland, Helsinki Foundation for Human Rights, Oświadczenie w sprawie wydarzeń w Warszawie w nocy z 7 na 8 sierpnia 2020 r. po zatrzymaniu aktywistki LGBT+ – Margot, available at: <https://www.hfhr.pl/stanowisko-helsinki-fundacji-praw-czlowieka-w-sprawie-zajsc-w-warszawie-w-nocy-z-7-na-8-sierpnia-2020-r-po-zatrzymaniu-aktywistki-lgbt-margot/>

¹⁶ Poland, Ombudsman Office, Nie tylko poniżające traktowanie... Końcowy raport KMPT o zatrzymaniach 7 sierpnia w Warszawie. Są konkretne zalecenia dla MSWiA i policji, available at: <https://www.rpo.gov.pl/pl/content/koncowy-raport-kmpt-o-zatrzymaniach-8-sierpnia-w-warszawie>

only to the content of advertising.¹⁷ It is expected that the law will be changed to comply with the amended Audiovisual Media Services Directive (Directive 2018/1818).

In June 2020, the Helsinki Foundation requested a reply from the President of Energa SA, a stock-exchange listed company (owned in 81% by the PKN Orlen in which the National Treasury holds 27% shares), regarding a prohibition of referring to equal treatment on the basis of homosexuality included in the ambassador contracts with members of the Polish representation in the World Basketball Championship in 2019.¹⁸

Transcription of foreign birth records of children of Polish citizens born in same-sex couples. Transcription of foreign birth records has been a subject of controversy for a longer period. In practice, some children of Polish parents could not acquire Polish citizenship or passport, because Polish authorities refused to transcribe their foreign birth record, which indicated persons of the same-sex as parents. In December 2019, the Supreme Administrative Court, by the resolution of the seven judges, held that it is not possible to create an entry in the Polish civil-status records where a woman is indicated as the “father” of a child.¹⁹ It stated that the transcription of a foreign birth certificate indicating same-sex persons as parents of a child would be contrary to the basic principles of the legal order in Poland. However, it also noted that the acquisition of Polish citizenship by a child born abroad may not depend on the prior transcription of the foreign birth certificate into Polish civil-status records.²⁰ As the discrepancy of the legal practice of issuing Polish identity documents in such cases continued, the Ombudsman requested the Minister of Digitalisation to provide internal rules for the local authorities on this matter.²¹ The Minister confirmed that local authorities should assign ID numbers and issue Polish identity documents to children born abroad to

¹⁷ Poland, Ombudsman Office, Ustawa o rtv chroni przed dyskryminacją ze względu na orientację seksualną tylko w materiałach reklamowych, available at: <https://www.rpo.gov.pl/pl/content/rpo-ustawa-rtv-chroni-przed-dyskryminacja-z-powodu-orientacji-seksualnej-tylko-w-reklamach>

¹⁸ Poland, Helsinki Foundation for Human Rights, Zakaz wypowiedzi na tematy związane z równouprawnieniem osób LGBT w umowach ambasadorskich polskich koszykarzy? HFPC zwraca się z pytaniami do Prezesa Energi S. A., available at: <https://www.hfhr.pl/zakaz-wypowiedzi-na-tematy-zwiazane-z-osobami-lgbt-w-umowach-ambadorskich-polskich-koszykarzy-hfpc-zwraca-sie-z-pytaniami-do-prezesa-energi-s-a/>

¹⁹ Resolution of 7 judges of the Supreme Administrative Court of 2.12.2020, Case no. II OPS 1/19.

²⁰ In the cassation proceedings, the Supreme Administrative Court upheld the view resulting from the above-mentioned resolution and ruled that it is not possible to transcribe a foreign birth certificate of a child in which two women are registered as parents. Judgment of the Supreme Administrative Court of 11.02.2020, Case no. II OSK 1330/17.

²¹ Poland, Ombudsman Office, PESEL i polski dokument dla dzieci z zagranicznym aktem urodzenia ze związków osób jednej płci. Odpowiedź Ministra Cyfryzacji, available at: <https://www.rpo.gov.pl/pl/content/mc-o-peselu-dowodzie-dla-dzieci-z-zagranicznym-aktem-urodzenia-w-zwiazku-jednoplciowym>

the same-sex parents, notwithstanding the refusal to transcribe their foreign birth certificates. In such cases, the local authority should carry out an investigation and enter "no father's data" in the register in order to comply with the principles of the legal order in Poland. The same view was adopted in the most recent judgment of the Supreme Administrative Court, which held that the foreign birth record should not be challenged in the course of administrative proceedings for confirmation of Polish citizenship. For this reason, if a father of a child is a Polish citizen, the child acquires Polish citizenship by law. In such a case, the fact that the child was born in a surrogacy agreement remains irrelevant, while confirmation of Polish citizenship is not contrary to the public order in Poland.²²

Conversion therapies for gay persons. A letter of the Polish Episcopate, in which it was proposed to create counselling centres "to help people who want to regain their sexual health and natural sexual orientation", caused another controversy concerning LGBTI people.²³ In this way, the Catholic Church openly supported conversion therapies for homosexual and transgender persons, which have long been banned by the WHO. At the same time, the Minister of Health strongly condemns all forms of discrimination against patients - both on the grounds of sexual orientation and on the grounds of disability, obesity, developmental disorders and mental illness. It also stated that conversion therapies are contrary to the current medical knowledge; and hence are not guaranteed as health care service. In this regard, the Minister explained that the prohibition of conversion therapies is not provided in health related laws since they do not relate to the health system.²⁴ The Ombudsman called the Prime Minister to initiate law prohibiting conversion therapy.²⁵

Case law of the ECtHR. It is worth noting a positive development regarding several applications to the European Court of Human Rights, which refer to unequal treatment of same-sex couples in various aspects of private life, and above all - the lack of institutionalisation of any form of same-sex unions in

²² Judgment of 10.09.2020, Case no. II OSK 1390/18.

²³ Steinhagen D., Episkopat: Demokratyczne państwo powinno zadbać, aby prawa osób LGBT+ nie były naruszane, Wyborcza.pl, available at: <https://czestochowa.wyborcza.pl/czestochowa/7,48725,26249669,episkopat-demokratyczne-panstwo-powinno-zadbac-aby-prawa-osob.html>

²⁴ Poland, Ombudsman Office, MZ do RPO: "terapije konwersyjne" niezgodne z aktualną wiedzą medyczną, available at: <https://www.rpo.gov.pl/pl/content/mz-do-rpo-terapije-konwersyjne-niezgodne-z-wiedza-medyczna>

²⁵ Poland, Ombudsman Office, Terapie konwersyjne powinny być w Polsce zakazane. Wystąpienie RPO do premiera, available at: <https://www.rpo.gov.pl/pl/content/rpo-do-premiera-terapije-konwersyjne-powinny-byc-zakazane>

Poland.²⁶ It is important to emphasise that it is evident that the Court seriously delayed the communication of these cases to the government, which could not be justified by any objective reasons. The 8-year period in case *Formela v. Poland* between the lodging of the application and the communication of the case raises doubts as to the fairness of the proceedings before the Strasbourg Court.²⁷

Covid-19 and older people. In the area of protection of elderly people from discrimination, the most difficult challenge was undoubtedly ensuring protection of their rights during a pandemic. In April 2020, the Ombudsman and the Committee of Experts for the Elderly at the Ombudsman's Office issued a number of observations and recommendations concerning state and social obligations towards older people.²⁸ In this group, the most vulnerable group were residents of nursing homes, who were not only affected by healthcare and personnel shortages,²⁹ but also by loneliness due to the ban on visitors from outside.³⁰ As regards the specific measures taken to prevent the spread of COVID-19,³¹ the provisions that required older people (65+) to shop in the morning (between 10 and 12) are worthy of attention. This solution was in force for over a month (from April 1 to May 4, 2020) and raised many questions about the legitimacy of the restrictions introduced to protect the health of the elderly, as well as their enforcement. According to the Ombudsman, younger customers entering the store before 10.00 a.m. should be aware that from 10.00 a.m. they would no longer have the right to stay in the store. If such a customer did not leave the store, the store staff could ask them to do so.³² Yet, they did not have the power to ask the

²⁶ Poland, National Council of Bar Association, available at: <https://kirp.pl/sprawy-osob-lgbt-przed-etpc/>

²⁷ Poland, Helsinki Foundation for Human Rights, ETPC zakomunikował polskiemu rządowi skargi dotyczące braku ochrony prawnej dla związków osób tej samej płci w Polsce, available at: <https://www.hfhr.pl/etpc-zakomunikowal-polskiemu-rzadowi-skarqi-dotyczace-braku-ochrony-prawnej-dla-zwiazkow-osob-tej-samej-plci-w-polsce/>

²⁸ Poland, Ombudsman Office, Zapewnić pomoc najbardziej potrzebującym - stanowisko RPO i Komisji Ekspertów ds. Osób Starszych po spotkaniu on-line 8 kwietnia 2020 r., available at: <https://www.rpo.gov.pl/pl/content/koronawirus-pomoc-seniorzy-osoby-z-niepelnosprawnosciami-stanowisko-rpo-i-ekspertow>

²⁹ Poland, Helsinki Foundation for Human Rights, Helsińska Fundacja Praw Człowieka zwraca się do Minister Rodziny, Pracy i Polityki Społecznej w związku z sytuacją w domach pomocy społecznej, available at: <https://www.hfhr.pl/helsinska-fundacja-praw-czlowieka-zwraca-sie-do-minister-rodziny-pracy-i-polityki-spolecznej-w-zwiazku-z-sytuacja-w-domach-pomocy-spolecznej/>

³⁰ Poland, Helsinki Foundation for Human Rights, Bez kontaktu ze światem zewnętrznym? HFPC pisze do Minister Rodziny, Pracy i Polityki Społecznej w sprawie odwiedzin w DPS, available at: <https://www.hfhr.pl/bez-kontakt-ze-swiatem-zewnetrznym-hfpc-pisze-do-minister-rodziny-pracy-i-polityki-spolecznej-w-sprawie-odwiedzin-w-dps/>

³¹ Ordinance of the Council of Ministers of 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of a state of epidemic (Journal of Laws 2020 No. 697).

³² <https://www.rpo.gov.pl/pl/content/koronawirus-faq-odc.-21>

customer for an ID.³³ The government introduced a similar rule restricting access to certain shops and services for older people (60+) (which is still in force) and its implementation caused much less controversies.³⁴

Alternative social security benefits for carers of persons with disabilities.

A positive decision concerning the rights of people with disabilities, who are often elderly people, was the judgment of the Regional Administrative Court recognising the right of their guardians to choose a more favourable benefit. Therefore, guardians who are entitled to pension benefits may choose between a nursing benefit and the old-age pension benefit.³⁵ Nevertheless, the conditions of obtaining the entitlement to social security benefits for carers of persons with disabilities are not yet clearly regulated in statutory law³⁶.

2. Findings and methodology of research, studies or surveys on experiences of discrimination against older people and against LGBTI people.

The most comprehensive research concerning the situation of LGBTI people in Poland was published in December 2019. It revealed that the highest standard of protection is effectively guaranteed to freedom of association, and the least developed standard applies to protection against hate crime, respect for family life, and protection against discrimination. While the legal framework for protection of LGBT rights has not changed for many years, national courts have been slow in taking into account international and European Union law and the case law of European courts.³⁷ Similar findings were included in the report prepared by the Fundamental Rights Agency, which indicate the increase of

³³ <https://www.rpo.gov.pl/pl/content/koronawirus-rpo-dlaczego-nie-legitymuje-sie-kupujacych-w-godz-10-12>

³⁴ § 7a of the Ordinance of the Council of Ministers of 14 October 2020 amending the Ordinance of the Council of Ministers of 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of a state of epidemic (Journal of Laws 2020 No. 1797).

³⁵ https://www.hfhr.pl/swiadczenie_dla_opiekuna_osoby_z_niepelnosprawnoscia/

³⁶ Poland, Helsinki Foundation for Human Rights, Opiekunce osoby z niepełnosprawnością przyznano świadczenie pielęgnacyjne pomimo ustalonego prawa do emerytury, available at: <https://www.rpo.gov.pl/pl/content/rpo-do-mrips-o-swadczeniu-pielegnacyjnym-opiekunow-z-renta-emerytura>

³⁷ https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20Sytuacja%20prawna%20os%C3%B3b%20LGBT%20w%20Polsce.pdf?fbclid=IwAR2k91jHrZ1kBERGK9buMeH0wfp9byUTFi-JKInBnnQU6gi_pwj_4LGpYk0

violence and discrimination against LGBTI people in Poland over the last 5 years, and the main reason for this was the negative attitude and discourse of politicians.³⁸

The Ombudsman published a document "Specificity of discriminating speech used against the elderly (elderspeak)" prepared by Danuta Parlak to indicate how not to address the elderly. It also explained what mechanisms and effects of various forms of communication with the elderly.³⁹

³⁸ <https://www.rpo.gov.pl/pl/content/dluga-droga-do-rownego-traktowania-osob-lgbti-prezentacja-badan-agencji-praw-podstawowych>

³⁹ <https://www.rpo.gov.pl/pl/content/elderspeak-po-polsku>

Chapter 2. Racism, xenophobia and related intolerance

1. Legal and policy developments relating to the application of the Racial Equality Directive

There were no major legal nor policy developments concerning the application of the Racial Equality Directive in the fields of employment, education or social protection at state level in Poland in 2020. In March 2020, a new Government Plenipotentiary for Equal Treatment was appointed and, at the same time, her office was moved from the Prime Minister Office to the Ministry of Labour, Family and Social Policy⁴⁰, thus giving this office less visibility. Since the appointment, the new Plenipotentiary's interventions have focused almost exclusively on equality of men and women and pay gap, with little attention given to issues of racial, ethnic or national inequality.

The process of development of a new National Equality Plan for years 2021-2030 was initiated in the second half of the year. In August, the Plenipotentiary has launched an online form where anybody could anonymously submit his or her ideas on what initiatives should be included in the Plan. 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 December⁴¹. 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. The draft Plan proposes to combat inequalities through undertaking action in 7 priority areas: 1/ anti-discrimination policies 2/ employment and social security 3/ education 4/ health 5/ access to goods and services 6/ awareness raising 7/ research and data collection 8/ coordination. The vast majority of the document focuses on gender equality. Addressing the issues of racism, xenophobia and related intolerance, the draft Plan proposes to disseminate awareness-raising and teaching materials among teachers, organise joint workshops for schools with Police participation, establish an award for a good practice in combatting racism in sports, and organise trainings for police officers to improve the quality of support for victims of hate crimes. Some positive developments in the area of non-discrimination could be observed at the local level. In September, the city of Warsaw initiated consultations on the Warsaw

⁴⁰Article 107 of the act amending the act on public administration sectors of 23 January 2020 (Journal of Laws 2020, position 284)

⁴¹ [Online public consultations of the National Plan for the Equal Treatment 2021-2030.](#)

Diversity Policy, inviting multiple civil society organisations to the process, while the presidents of Białystok and Cracow have appointed their first Plenipotentiaries for Equal Treatment.⁴²

The COVID-19 pandemic has prompted introduction of various temporary laws organiaing life on the territory of Poland.⁴³ However, these were applied equally to all persons present on the Polish territory e.g. as regards access to support mechanisms for employers and employees. In addition, access to tests and medical treatment in relation to the coronavirus was equal for everybody disregard their nationality, ethnicity, migration status or health insurance⁴⁴.

2. Legal and policy developments relating to the application of the Framework Decision on Racism and Xenophobia relevant to combating hate speech and hate crime

There were no legal developments that relate to the application of the Framework Decision on Racism and Xenophobia.

The new draft law amending provisions on incitement to hatred, an effect of the works of the Inter-Ministerial Team for Preventing the Propagation of Fascism and Other Totalitarian Regimes and Crimes of Inciting Hatred Based on National, Ethnic, Racial or Religious Differences, or Disbelief (which was appointed as a response to the raise in hate crimes and hate speech in 2018) was passed by the Parliament and instantly sent to the Constitutional Tribunal by the President for its constitutional review⁴⁵. Upon its review, the law was deemed unconstitutional and never entered into force.⁴⁶ The draft law was about to introduce higher penalty

42 [In Białystok](#) the Plenipotentiary was appointed in June 2020, while [in Cracow](#) in October 2020.

43 E.g. the act of 2 March 2020 on specific solutions in connection to prevention and counteracting COVID-19, other infectious diseases and crisis situation inflicted by them (Journal of Laws 2020, position 374) and its many amendments, the act of 16 April 2020 on specific support instruments in connection to the spreading of the SARS-CoV-2 (Journal of Laws 2020, position 695)

44 Article 12 (6) of the act on publicly funded healthcare services of 27 August 2004 (Journal of Laws 2020, position 1398).

45 The legislative process of the draft law can be traced on the webpage of the Parliament.

46 Judgement of the Constitutional Tribunal of 14 July 2020, case no Kp 1/19.

for incitement to hatred (up to 3 years of imprisonment) and extended the definition of promotion of totalitarian regimes to Nazis and communist ideologies.

The Ministry of Internal Affairs and Administration declares its commitment to the hate crime 2014 General Prosecutor`s guidelines⁴⁷, issued by the previous government, introducing Standard Operating Procedures in hate crime cases, but has not published the 2019 annual report on hate crimes motivated by racial hatred a second year in the row, despite it being a good practice under the previous government. There are also some concerns about the transfers of prosecutors specialising in hate crimes: in September, seemingly under pressure from the nationalist movements⁴⁸, Warsaw District Prosecutor Młynarczyk, who was famous for his extraordinary effectiveness in persecuting hate crimes, was delegated to the Otwock District Prosecutor Office⁴⁹.

In September, the National Radio and Television Council has declared that they are in the process of developing a policy against fake news and hate speech. The Commissioner for Human Rights' intervention in cases of repeated incidents of Antisemitic hate speech on the public national television (TVP Info)⁵⁰ prompted the declaration.

The Commissioner for Human Rights and OSCE joint report investigating the phenomenon of underreporting of hate crimes from 2018⁵¹ was in 2020 once again presented to and debated in two fora: Joint Commission of Government and National and Ethnic Minorities and Parliamentary Commission of National and Ethnic Minorities. On both occasions, the representatives of the Ministry of Internal Affairs and Administration attempted to discredit the report and its main conclusion (that only 5% of hate crimes are reported), targeting its methodology and objectivity⁵². During a session of Parliamentary Commission, the Deputy

47 Wytyczne Prokuratora Generalnego z 26 lutego 2014 r.w zakresie prowadzenia postępowań o przestępstwa z nienawiści, PG VII G 021/54/13.

48 The petition asking for the recall of Prosecutor Młynarczyk has collected 55575 signatures.

49 E.Ivanova, *Prokurator słynął ze ścigania przestępstw z nienawiści. Jego jednostce odebrano wszystkie takie sprawy*, Gazeta Wyborcza of 8 September 2020.

50The letter to the Commissioner for Human Rights from the President of the National Radio and Television Council of 10 September 2020.

51 OSCE (2018), *Building A Comprehensive Criminal Justice Response To Hate Crime. Project Closing Conference Report*, 2019. According to the survey conducted in the period od 2016-2017 by the Commissioner for Human Rights in cooperation with OSCE/ODIHR, 95% of hate crimes are not reported to the Police. The survey was conducted among Ukrainians, Muslims and sub-Saharan Africans according to the Respondent-Driven Sample method. In total, over 600 persons were interviewed.

52 13th Session of the Parliamentary Commission of National and Ethnic Minorities of 14 September 2020, p. 20-21

Minister of Internal Affairs and Administration has declared that the Ministry is currently reflecting on the introduction of a hate crimes programme (or a special team – not clear), but no specific details were given.⁵³ The Ministry has also presented its own data on the number of hate crimes in Poland in 2019, according to which the number of hate crimes have dropped in 2019 in comparison to 2018. According to the data, in 2019 there were only 934 investigations initiated in cases of hate crimes, as opposed to 1124 investigations in 2018.⁵⁴ Just one session earlier, the Parliamentary Commission of National and Ethnic Minorities has voted not to debate the report on hate crimes and hate speech in 2018-2019 prepared by the Association Never Again, the argument being that the Commission should not pay attention to reports from civil society organizations who are not ethnic or national minority organisations⁵⁵.

The outbreak of COVID-19 in mid-March has fuelled the rise of racism and xenophobia. What started out as fear and distrust towards people of Asian descent⁵⁶, quickly evolved into hatred towards other national groups. The Never Again Association has launched a report from racist and Antisemitic incidents recorded in the first months of pandemic in Poland (January-May), depicting the scale of the phenomenon⁵⁷. The authors present, in chronological order, examples of racial, ethnic and national discrimination and violence⁵⁸ which could be directly linked to the outbreak of coronavirus as well as discriminatory statements issued by public figures, politicians and journalists. As one of the authors of the report states: *these first months marked the first wave of hatred towards persons of Asian origin in Polish history, but also anti-Semitic stereotypes, but also enmity and disdain for other groups such as: Roma, people of African descent, Ukrainians, Americans, Russians, Muslims, refugees, LGBT people, environmentalists, vegans, and masons.*⁵⁹ The national television controlled by the government participated

53 Ibidem, p. 20.

54 Ministry of Internal Affairs and Administration (2020), *Informacja Ministra Spraw Wewnętrznych i Administracji na temat incydentów, zachowań, zdarzeń powodowanych nienawiścią lub brakiem tolerancji wobec lub z udziałem mniejszości narodowych i etnicznych w Polsce w latach 2018-2019*, p. 2. The document has been sent to the members of the Parliamentary Commission for National and Ethnic Minorities before the session and has not been made public yet. It was disclosed to the author based on the FOI request.

⁵⁵ [12th Session of the Parliamentary Commission for National and Ethnic Minorities of 20 July 2020](#), p. 4.

56 See: AWOźniak, *Azjata to Azjata*, [in]: Tygodnik „Przegląd” 18/2020.

57 R. Pankowski and others (2020), *Wirus nienawiści: Brunatna Księga czasu epidemii*, The “Never Again” Association (Stowarzyszenie “Nigdy Więcej”), 2020.

58 The report lists 15 cases of unequal treatment, insults and violence, out of which a few were already reported in the Franet country study released on the 8th April 2020 (pages 9-10) and the Franet country study released on the 26th June 2020 (page 9).

59 The communication on the launch of the report.

in the spreading of disinformation and conspiracy theories blaming the pandemic on various national or religious groups, most commonly Jews⁶⁰.

60 R. Pankowski and others (2020), *Wirus... op.cit.*

Chapter 3. Roma equality and inclusion

1. Measures and developments addressing Roma/Travellers

Early in January 2020, the Ministry of Internal Affairs and Administration has launched a list of priority issues in the Polish policy towards minorities in years 2020-2024, listing among them education of Roma children as one of the priorities⁶¹. The Deputy Minister admitted on this occasion that *the legal instruments and organisational and financial initiatives undertaken since 2001 have not made visible change as regards participation of Roma children in education*⁶².

Since 2020 marks the last year of the 2016-2020 National Roma Integration Programme, an external evaluator selected based on an open competition has evaluated it. The evaluation report was launched only in September 2020, due to the annulment of the first competition⁶³. The evaluation showed that none of the indicators set out in the 2016-2020 programme has been achieved. It states that, over the years, the Ministry of Internal Affairs and Administration, due to the reconstructions and rotation of staff has *ceased to act like a host of the process*. According to the authors of the report, even though the Programme remains managed by the Ministry of Internal Affairs and Administration, *the implementation lacks necessary leadership, which would ensure its importance, initiate discussions and coordinate actions of various stakeholders*.⁶⁴ The number of staff working on the programme decreased (to one employee) and most of the employees with significant experience and engagement in Roma community issues have left the Ministry. The report identifies one unquestionably good practice: the position of Assistant of Roma Education (ARE) employed by schools often with the Romani background, who support Romani pupils, but also play a significant role in the integration of Roma communities⁶⁵.

The new draft Roma Integration Programme 2021-2030⁶⁶ that was launched in September sets out 4 priority topics for the upcoming years: 1) education, 2) housing, 3) innovative integration projects and 4) systemic projects. The delay in

61 5th Session of the [Parliamentary Commission of National and Ethnic Minorities of 21 January 2020](#).

62 Ibidem.

63 M.Szostakowicz and others, *Badanie ewaluacyjne Programu integracji społeczności romskiej w Polsce na lata 2014 – 2020*, Warsaw 2020.

64 Ibidem, p. 152

65 Ibidem, p.160

66 The draft Programme document is under consultation and has not been adopted yet.

finalising an evaluation report was the reason why the draft Programme has not taken into consideration the results of the final evaluation. Still, some of the recommendations were present in earlier evaluations, and therefore found their place in the new programme e.g. an obligation is imposed on the voivodes⁶⁷ to establish regular working relations with all of the stakeholders who work with Roma communities on their territory, more support is foreseen for the AREs through regular vocational trainings and the municipalities are strongly encouraged to create local Roma integration strategies by giving priority in accessing funding to those municipalities who develop one. However, there are recommendations that were not taken into account, e.g. introduction of obligatory ongoing needs assessment at the local level in order to adjust the support to the genuine and current needs of the Roma community, or measures addressed at expanding the participation of the Roma people in the development and monitoring of the local programmes. The draft Programme proposes a set of indicators, exclusively in the area of education and housing. A few of them match the portfolio of indicators developed by the Roma Working Party in October 2020⁶⁸, i.e. its objective four (increase effective equal access to quality inclusive mainstream education) and seven (increase effective access to adequate desegregated housing and essential services). After the publication of the draft Programme on the Ministry`s website, a group of 53 stakeholders were invited to comment on the draft with the deadline of 7 days; with important stakeholders, e.g. *Foundation Towards Dialogue* being excluded.⁶⁹

2. Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion

COVID-19 has impacted heavily the most disadvantaged communities of Polish Roma and Roma migrants living in Gdańsk, Poznań and Małopolska (e.g. Maszkowice and Limanowa). The local response depended on the local government and its engagement with the community and civil society.

It must be noted that settlements in the Małopolska Voivodeship, in Poznań, Gdańsk and Wrocław are in a very difficult sanitary situation: they lack access to

67 Voivodes are responsible for the management of the programme and distribution of funds.

68 Annex to the Communication from the Commission to the European Parliament and the Council *A Union of Equality: EU Roma strategic framework for equality, inclusion and participation*.

69 Letter of the Ministry of Internal Affairs and Administration of 14 August 2020 to the civil society stakeholders.

the municipal sewage systems and have very few sources of potable water. The municipal responses to the COVID-19 varied depending on the municipality: while in Poznań the city has immediately initiated cooperation with a civil society organisation contracting them to regularly visit the settlements and provide them with information, medical screening and personal protection equipment and disinfectants⁷⁰, in Zadział, Krośnica and Czchów (Małopolska) the municipalities provided the communities with protection equipment⁷¹, but the city of Gdańsk has only initiated targeted support to the Roma community after the issue of their one-month-long inaction was raised in the nation-wide newspaper (*Gazeta Wyborcza*)⁷². In Maszkowice⁷³ and the abovementioned settlements of Małopolska, the municipalities have failed to provide the protection equipment, but the community workers made effort to reach out to the communities with information about the virus and its prevention, and posters and information was passed on to them via megaphones.⁷⁴

The most difficult was the situation of Roma pupils in the period between March and June. The majority of settlements mentioned above have no access to the internet and could not participate in the online education. The AREs were intermediaries between the pupils and the school as regards provision of educational materials and collecting them from pupils, but this support could not substitute lessons as the children were supposed to acquire knowledge mostly on their own.⁷⁵

The Coalition for Empowerment of Intercultural and Roma assistants set up in 2019 continued its work of bringing together assistants from all over Poland. The 1st Forum of Intercultural and Roma Assistants took place in June online. It brought together 30 practitioners, teachers, and experts who debated about the role of education assistants, exchanged good practices and developed recommendations to advocate for in the future.⁷⁶

70 Letter of the President of Poznań to the Commissioner for Human Rights of 22 April 2020.

71 Letter of the Małopolska Voivode to the Commissioner for Human Rights of 20 April 2020.

72 A.Dobiegała, *Koronawirus. Romowie z Gdańska bez maseczek, środków dezynfekcyjnych i dostępu do wody*, [in:] *Gazeta Wyborcza* of 13 April 2020. After the article the city has provided the Roma community with masks and disinfectants.

73 Letter of the Maszkowice Mayor to the Commissioner for Human Rights of 6 April 2020.

74 Letter of the Małopolska Voivode to the Commissioner for Human Rights of 20 April 2020.

75 Letter of the Małopolska Voivode to the Commissioner for Human Rights of 7 April 2020.

76 The brief description of the event can be found on the webpage of the Towards Dialogue Foundation.

Chapter 4. Asylum, visas, migration, borders and integration

Extension of residence permits and other authorisations to stay that expired during COVID-19 pandemic measures.

EUMS/ Republic of North Macedonia, Republic of Serbia	Category of TCN	Brief description of the measure	Legal source (legislation or case law as relevant) with hyperlink	Comments
	Complete this row if measures concern all/most of the TCN listed below whose (national or EU law based) permission to stay expired during COVID-19 related travel restrictions. In this case indicate in the next rows the categories to which the measure applies	In Poland , the 'state of epidemic threat' was in force from 14 March 2020 until 20 March 2020 ,when the 'state of epidemic' was introduced by the 'epidemic regulation'. The 'state of epidemic' remains in force until its official cancellation. The 'state of epidemic' can be cancelled fully or replaced again by the 'state of epidemic threat' (a state of lower risk). In order to do it, the regulation, which introduces the last state in force, has to be changed or	1) the Regulation of the Minister of Health of 13 March 2020 regarding the announcement of the state of epidemic threat in the territory of the Republic of Poland – hereinafter 'the regulation on the state of epidemic threat' (Journal of Laws 2020, item 433).	The central migration institution - the Head of the Office for Foreigners – has published information on these legal provisions: 'Coronavirus outbreak – special solutions for foreigners' . The information contains also the detailed document in English , which includes a detailed description and legal basis of the

		<p>withdrawn. The date of cancellation is currently unknown. The provisions described in this Chapter apply until the end of the state whichever will be last in force (both are referred to as an 'epidemic'). On 8 March 2020, came into force the Act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (the 'special act'). The special act has been amended on 31 March 2020 by the 'anti-crisis shield 1.0'. Later, on 18 April 2020, the special act has been amended by the 'anti-crisis shield 2.0' and on 16 May 2020 by the 'anti-crisis shield 3.0' (the effective date). Legal solutions included in the amended special act concerned TCN residing in Poland whose documents expired during the</p>	<p>2) the Regulation of the Minister of Health of 20 March 2020 on the announcement of the 'state of epidemic' in the territory of the Republic of Poland - - hereinafter 'the epidemic regulation' (Journal of Laws 2020, item 491).</p> <p>3) The Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (Journal of Laws 2020, item 374) - hereinafter the 'special act'.</p> <p>4) The Act of 31 March 2020 amending the Act</p>	<p>introduced solutions legal solutions.</p> <p>A Polish NGO working in the field of migration outlined that its proposal on the extension of the residence permits and other authorisations to stay that expired during COVID-19 pandemic measures were taken into account during legislation process and that it 'increased the protection of TCN'. Furthermore, the Helsinki Foundation for Human Rights favourably referred to changes in the situation of foreigners in this regard.</p>
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		<p>epidemic and allowed them to remain legally in Poland during the epidemic and 30 days after the end of it. The amendments of the anti-crisis shield 1.0 concerned an extension of: temporary residence permits, national visas, time limits for leaving Poland after refusal on granting the permits, time limits for voluntary return. The group of TCN and legal titles, which allowed them to remain in Poland during the epidemic and 30 days after the end of it, have been expanded in the anti-crisis shield 2.0. The anti-crisis shield 2.0 concerned an extension of: visa-free regime, Schengen visas issued by Poland, Schengen visas or long-term visas issued by other Schengen countries, residence permits issued by other Schengen countries,</p>	<p>on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts (Journal of Laws 2020, item 568) – hereinafter the ‘anti-crisis shield 1.0’.</p> <p>5) The Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Journal of Laws 2020, item 695) – hereinafter the ‘anti-crisis shield 2.0’</p> <p>6) The Act of 14 May 2020 amending some</p>	
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		<p>long-term visas or residence permits issued by EMS that are not Schengen countries.</p> <p>The anti-crisis shield 3.0 facilitated the provisions on work-permits for TCN who remained on Polish territory and expanded the possibilities of performing legal work by them without the obligation to apply for new work permits.</p>	<p>acts in the field of protective activities in connection with the spread of the SARS-CoV-2 virus (Journal of Laws 2020, item 875) – hereinafter the 'anti-crisis shield 3.0'.</p>	
	<p>Holders of visas issued based on the Visa Code No. 810/2009 (as last amended by Regulation (EU) No. 2019/1155) (Schengen visas)</p>	<p>Applies</p>	<p>Article 15z¹ (1) of the special act (the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).</p>	<p>N/A</p>
	<p>Visa-free TCN who reached the maximum of 90 days</p>	<p>Applies</p>	<p>Article 15z¹ (1) of the special act (the Act of 2 March 2020 on special</p>	<p>N/A</p>

<p>in any 180-day period under Article 4 of the Visa List Regulation (Regulation (EU) 2018/1806)</p>		<p>solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).</p>	
<p>Holders of long-term visas issued by the EUMS (under Regulation (EU) No. 265/2010 and beyond, under national law)</p>	<p>Applies</p>	<p>Article 15z¹ (1) of the special act (the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).</p>	<p>N/A</p>
<p>Holders of residence permits issued under Regulation (EC) No. 1030/2002 (as last amended by</p>	<p>Applies</p>	<p>Article 15z¹ (1) of the special act (the Act of 2 March 2020 on special solutions related to preventing,</p>	<p>N/A</p>

	Regulation (EU) 2017/1954)		counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).	
	Holders of local border traffic permit under Regulation (EC) No. 1931/2006	Does not apply	N/A	N/A
	Any other category of TCN not listed above.	<p>1) Extension of time limits for leaving Poland after refusal on granting the permits – allowed to remain in Poland during the epidemic and 30 days after the end of it</p> <p>2) Extension of time limits for voluntary return – allowed to remain in Poland during the epidemic and 30 days after the end of it</p>	<p>1) Article 15zzza of the special act (the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).</p> <p>2) Article 15zzzb of the special act (the Act of 2 March 2020 on special</p>	N/A

			solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws, item 374).	
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Notes:

TCN = third-country nationals

EUMS = EU Member State

Chapter 5. Information society, privacy and data protection

1. Legal and political initiatives that have been implemented to support access to, and use of, personal data.

Legal changes

In 2020, the Parliament adopted changes in the Act on identification documents. The introduced change was a part of the legislation aiming at mitigating the consequences of the COVID-19 pandemic. The new law provides, among others, the authorities who could request the information from the identification documents database could be any person who presents a factual interest. In the opinion of the Ombudsman, such a change disproportionally widens the group of persons who may obtain information from the database and may pose a threat to data protection.⁷⁷

Harmful online content and data retention

In 2020, there have been no significant legal developments regarding the problem of regulation the illegal online content. In September 2020, the Ministry of Digitalisation issued a communication warning about the harmful online content. According to the results of two research carried by NASK (a National Research Institute under the supervision of the Ministry of Digital Affairs) and the Empowering Children Foundation, 84% of the children in age of 13-15 year old admitted that they have heard about the online harmful content, whereas 37% of children stated that they watch such streaming. The NASK Academy issued a guidebook for parents on how to cope and react to the harmful online content. Additionally, the Empowering Children Foundation runs a hotline for children who seek aid or support

⁷⁷ Poland, Ombudsman, Koronawirus i Tarcza 2.0. Nowe zasady dostępu do danych o dowodach osobistych obywateli, available at: <https://www.rpo.gov.pl/pl/content/koronawirus-i-tarcza-rpo-nowe-zasady-dostepu-do-danych-obywateli>

related to the consequences of watching the harmful online content.⁷⁸ Furthermore, in 2020, the Ombudsman Office in cooperation with the Empowering Children Foundation launched a social campaign "Report it" (Zgłoś to!). The campaign aim is to provide to internet users with an effective tool of notifying the state authorities about the harmful online content. The tool is available at the website www.zglos.to and contains a form with basic questions enabling to classify the harmful content as among others hate speech, vulgar content or illegal pornography or threats.⁷⁹

In 2020, the government worked on the draft legislation amending the Telecommunication Act. According to the Minister in the Chancellery of the Prime Minister information, the draft regulation will address the problems concerning the data retention in the view of the EU legislation. The law has not been directed to public consultations yet.⁸⁰

Response to COVID-19 pandemic and threats to data protection

As a part of the response to the COVID-19 pandemic, the government also launched several applications including an application ProteGo. The application tracks the social network and contacts of persons who might be infected with the coronavirus and warns its users about the risks related to the COVID-19. Since the application's launch in April 2020, the Ministry of Digitalisation carried out an extensive consultation process regarding the use of the application. The Ministry set up an expert group and presented an extensive privacy policy regarding this application as well as application data protection audit. In the assessment of the Panoptykon Foundation, the application seems to be secure and in compliance with good standards of designing such applications.⁸¹ The use of this application is voluntary, according to the media reports, by August 2020 only 669 thousand users

⁷⁸ Poland, Ministry of Digitalization (Ministerstwo Cyfryzacji), Kogo podziwia Twoje dziecko w sieci? Uważaj na patotreści, available at: <https://www.gov.pl/web/cyfryzacja/kogo-podziwia-twoje-dziecko-w-sieci-uważaj-na-patotresci>

⁷⁹ Poland, Empowering Children Foundation (Fundacja Dajemy Dzieciom Siłę), #ZglosTo – wystartowała kampania społeczna Rzecznika Praw Obywatelskich i Fundacji Dajemy Dzieciom Siłę przeciwko szkodliwym treściom w internecie, available at: <https://fdos.pl/zglosto-wystartowala-kampania-spoeczna-rzecznika-praw-obywatelskich-i-fundacji-dajemy-dzieciom-sile-przeciwko-szkodliwym-tresciom-w-internecie/>

⁸⁰ Poland, Sejm, Interpelacja nr 12811 w sprawie obowiązku gromadzenia przez operatorów danych telekomunikacyjnych, available at: <http://sejm.pl/Sejm9.nsf/interpelacja.xsp?typ=INT&nr=12811>

⁸¹ Poland, Panoptykon Foundation, ProteGO Safe: instalować czy nie?, available at: <https://panoptykon.org/czy-instalowac-protego-safe>

used the application.⁸² However, there are significant data protection concerns regarding another state's application launched in response to the pandemic, namely the Home Quarantine (Kwarantanna domowa) application. In his letter to the Prime Minister, the Ombudsman stated that the scope of data gathered by the application might be too broad. In order to operate properly, the application has to be installed on a device with access to internet, camera, photos and localization data.⁸³

As a part of preventing the spread of pandemic, the classes in schools were changed to online education. This shift caused numerous organizational and technical problems as well as posed certain challenges in the field of data protection. In response to these challenges, the Data Protection Office issued a guidebook for teachers, schools headmasters and pupils concerning the best solutions of protecting child's data protection in online schooling. First, the guidebook underlines the schools headmasters' duty to inform both parents and pupils about the rules of online schooling and the maximum scope of pupils' personal data that should be gathered to launch online classes. The Data Protection Office guidebook also collected information concerning protecting the gathered personal data and the rules of their processing.⁸⁴

Organisation of the Presidential elections in 2020

Furthermore, data protection became one of the key issues in the process of organising the Presidential elections in 2020. In February 2020, the Speaker of Sejm scheduled the Presidential elections for 10 May 2020. The process of organising the elections has interfered with the lockdown introduced in response to the COVID-19 pandemic. On 6 April 2020, Sejm (the lower chamber of the Polish Parliament) adopted the law that would have enabled organizing the postal elections. The law raised significant concerns regarding its constitutionality and protecting equal access to voting for each voter. Furthermore, the law did not provide sufficient guarantees for data protection. After Sejm's decision, the law was directed to Senate, which rejected the law on 6 May 2020, so just 4 days before the voting day. Even though the law was not adopted and binding, still in April 2020 the Prime Minister ordered the administration to start preparing for the postal voting. The public postal operator requested the local government bodies for

⁸² Business Insider, Resort podał koszt aplikacji ProteGO Safe. Eksperci: zmarnowane pieniądze, available at: <https://businessinsider.com.pl/technologie/nowe-technologie/protego-safe-koszt-aplikacji-liczba-uzytownikow-opinie/mpb177r>

⁸³ Poland, Ombudsman's Office, Aplikacja „Kwarantanna domowa” budzi wątpliwości obywateli. Rzecznik pisze do premiera, available at: <https://www.rpo.gov.pl/pl/content/rpo-do-premiera-aplikacja-kwarantanna-domowa-budzi-watpliwosci>

⁸⁴ Poland, Ministry of National Education (Ministerstwo Edukacji Narodowej), Dane osobowe bezpieczne podczas zdalnego nauczania – poradnik UODO dla szkół, available at: <https://www.gov.pl/web/edukacja/zdalne-nauczanie-uodo>

access to voters' lists. The vast majority of heads of self-governing bodies refused to share voters' list with the postal operator. In their opinion, the law enabling the public postal operator to organize postal voting is still not binding; therefore, it cannot be used as a base to share data with the operator. They pointed out, that at the same time, there is no other legal basis that would allow the public postal operator to obtain such data. Nevertheless, the refusal did not prevent the public postal operator from gaining the data. The Ministry of Digitalisation approved the operator's motion to gain access to the population register and share data despite the lack of an appropriate legal base. These decisions raised significant concerns from the perspective of data protection from e.g. the European Data Protection Inspectorate, the Ombudsman, and the civil society. In September 2020, the Voivodeship Court in Warsaw deemed the Prime Minister's decision to organize the election without a valid legal basis as a "flagrant violation of law". Furthermore, a group of civil society activists (including the Watchdog Association or Panoptykon Foundation) notified the prosecution office about the possibility of committing a crime by the city mayors who gave the Postal Office information about voters living in a constituency without a valid legal basis. For example, in the case of the mayor of Wapno, the prosecution office first discontinued the proceeding, however in September 2020, the court order the prosecution to continue the investigation.⁸⁵ The investigation is still pending.

Changes in the Act on common courts

In 2020, the Parliament adopted the law changing the Act on common courts. The law introduced an obligation for judges and prosecutors to provide written statements on their membership in foundations and associations. This provision was criticised by the Ombudsman⁸⁶ and OSCE ODIHR⁸⁷ as disproportionate and may violate judges and prosecutors' freedom of association and right to privacy.

⁸⁵ Poland, Watchdog Poland, Dane wyborców przekazane Poczcie Polskiej, czy to przestępstwo?, available at: <https://siecobywatelska.pl/dane-wyborcow-przekazane-poczcie-polskie-czy-to-przestepstwo/>

⁸⁶ Poland, Ombudsman, Oświadczenia sędziów i prokuratorów o przynależności do zrzeszeń. RPO wnosi do PUODO o środki zabezpieczające, available at: <https://www.rpo.gov.pl/pl/content/oswiadczenia-sedziow-i-prokuratorow-o-przynaloznoscido-zrzeszen-rpo-pisze-puodo>

⁸⁷ ODIHR OSCE, Urgent interim opinion on the bill amending the Act the organization of common courts, the Act on the Supreme Court and certain other acts of Poland (as of 20 December 2019), available at: https://www.osce.org/files/f/documents/c/c/443731_2.pdf

2. Artificial intelligence and big data

Please fill in the table below with any initiatives you may identify in your country:

MS	Actor*	Type*	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
PL	Government	National Policy Plan	In 2020, the government adopted "The policy of AI development in Poland". The adoption of this document was preceded by social and expert consultations carried out since 2019. The policy concerns 6 areas: AI and society, AI and science, education, AI and innovative companies, AI and International cooperation and AI and public sector. The policy includes short and long-term goals. The process of implementing this policy is envisaged for 7 years until 2027. The policy also envisages	No	YES (including, among others, human dignity and right to privacy)	https://www.gov.pl/web/cyfryzacja/rozwój-sztucznej-inteligencji-w-polsce--wazna-decyzja

			an establishment of a national coordination centre for AI development in Poland.			
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Chapter 6. Rights of the child

1. Measures taken during the COVID 19 to ensure the well-being of children living in poverty and the protection of children from violence.

Measures to address the specific vulnerabilities of children living in poverty	<p>On 15 July 2020, Sejm adopted an Act on tourist vouchers.⁸⁸ According to the new Act, families with children might be granted with one tourist voucher per child. The voucher enables them to pay for holidays or other tourist vouchers. Each voucher is worth PLN 500 (PLN 1000 in case of children with disabilities).</p> <p>In the reported period, Poland maintained to support families by social benefits: the so-called family 500+ (designed to support families with children) and a good start benefit (designed to support families with children attending schools).</p> <p>In March 2020, the government of Poland announced the closure of schools. At the same time, it introduced a programme aimed at supporting children and teachers access to remote education.⁸⁹ For this purpose, the government allocated PLN 180 million for the purchase of computer hardware and access to mobile Internet for children in need and teachers.</p> <p>According to the President of Warsaw, the funds allocated by the government did not allow Warsaw to buy each student in need a computer⁹⁰. In his opinion, this will have a major impact on children access to education during the pandemic. In response to that problem, some of the local community members organized the donation of used</p>
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⁸⁸ Poland, The Act of 15 July 2020 on the Polish Tourist Voucher (Journal of Laws, item 1262, as amended).

⁸⁹ Poland, Ministry of Education, PLN 180 million for computer hardware and the Internet for students and teachers, available in Polish at: <https://www.gov.pl/web/edukacja/180-milionow-zlotych-na-sprzet-komputerowy-i-internet>

⁹⁰ Poland, Dziennik Gazeta Prawna, Trzaskowski: The city has no funds to buy provide all students with computers, available in Polish at: <https://edukacja.dziennik.pl/aktualnosci/artykuly/6475944,trzaskowski-szkola-komputery-koronawirus-nauczanie-zdalne.html>

	computer hardware and then transferred them to children in need ⁹¹ .
<p>Measures to protect children from violence</p>	<p>Interference in online education</p> <p>In March 2020, the government of Poland announced the lockdown and closed schools. It forced the Polish system of education to transit rapidly to remote education and caused severe difficulties connected with lack of digital competences of teachers, principals and parents. These manifested, inter alia, in the problem of third persons and students actions to disturb online lessons. Teachers had to face the problem of anonymous persons joining online lessons, shouting, swearing, and making fun of the teachers.</p> <p>In response to this problem, the Commissioner of Human Rights asked a group of experts from non-governmental organisations, unions, school and IT experts, to develop a guidebook addressed to teachers and schools' principals. The guidebook "How to safely conduct online lessons?" is available online.⁹²</p> <p>Amendment to the Act on Counteracting Domestic Violence</p> <p>On 30 April 2020, the Parliament adopted an Act on the amendment to the Code of Civil Procedure and the Act on Counteracting Domestic Violence.⁹³ The amendment modified the procedures regarding securing the safety of domestic violence victims and provided police officers with new competences.</p> <p>First, the amendment modified the provisions regarding apprehension of a perpetrator posing a direct threat to</p>

⁹¹ Poland, Warsaw residents give their computers to needy students and teachers, available in Polish at: <https://warszawa.naszemiasto.pl/uwolnij-zlomka-warszawiacy-oddaja-swoje-komputery/ar/c1-7621723>

⁹² Poland, Commissioner for Human Rights, How to safely conduct online lessons? A guide for teachers and principals, available in Polish at: <https://www.rpo.gov.pl/pl/content/jak-prowadzic-lekcje-online-poradnik-dla-nauczycieli-i-dyrektorow>

⁹³ Poland, Act of April 30, 2020 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws, item 956).

	<p>human life or health. According to the amendment, the police officer, before deciding on perpetrator's apprehension, should be obliged to take into account specific circumstances described by law, e.g. personal characteristic of a victim (age, disability etc.), previous reports regarding domestic violence occurrence and psychiatric condition of the perpetrator.</p> <p>Second, the Police will have the power to order the perpetrator to immediately leave the premises occupied by the perpetrator and the victim of domestic violence. Furthermore, the Police will also be able to issue a restraining order for the perpetrator of domestic violence. The power to issue such orders will be independent from the power to apprehend the perpetrator, as well as its effectiveness will not be premised on the perpetrator's consent. The scope of the order may include the obligation to leave the premises and its direct proximity, or the prohibition of approaching the premises and its direct proximity, or both. The new law does not limit the duration of the order.</p> <p>The Police has been also obliged to provide victims of domestic violence with sufficient information regarding further proceedings to obtain permanent restriction order, initiate criminal proceedings against the perpetrator of domestic violence or gain appropriate support. The burden of having to contact the support organisation remains, however, on the victim.</p> <p>According to the Act, the Police will be also obliged to verify at least three times whether the perpetrator of domestic violence is not violating the order to leave the premises occupied by the victim. In case of violation of the order, the sanction would be arrest (up to 30 days), limitation of liberty or fine.⁹⁴</p> <p>The amendment has also specified conditions regarding the questioning of child victims of domestic violence. According to the new wording of the Act on the Police, the</p>
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⁹⁴ Poland, Code of Petty Offences, 20 May 1971, Article 66b.

	<p>questioning of children who are below the age of 15 years will have to take place in a child-friendly environment, adapted to the needs of children. Moreover, all the questioning should be conducted by a judge and take place in the presence of psychologists. The children might indicate an adult person who will assist them during questioning. The questioning should also be video recorded.</p> <p>Furthermore, the amendment limits the number of situations in which a child might be questioned. Whenever the minor has been questioned in other proceedings, the judge may refrain from making additional questioning. Moreover, the judge should refrain from questioning a child in all cases where their affidavit will not be relevant for the case.</p>
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2. Legal and policy measures or initiatives developed about criminal proceedings

<p>Legislative changes</p>	<p>The Ministry of Justice continues the work on a draft Act on Juveniles.⁹⁵ A group of experts working in the Ministry of Justice has developed the draft Act. It was presented in March 2019. Since that moment, the government is still working on its content.</p> <p>The Act on juveniles will thoroughly regulate the status of children entering into conflict with the law, judicial proceedings concerning juvenile delinquency, the structure of detention facilities for children, as well as rights and duties of children detained in such facilities.</p> <p>The Act transforms some of the correctional facilities into a new type of detention facility for children: adaptation and educational centres. On the other hand, no provision of the draft Act recognises the new measure, nor the placement of a child in educational centres as ultima ratio. Therefore,</p>
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⁹⁵ Poland, Ministry of Justice, Draft Act on Juveniles, available in Polish at: <https://legislacja.rcl.gov.pl/projekt/12321373>

	<p>family courts will not be obliged to use such detention measures as a last resort.</p> <p>Furthermore, the draft Act duplicates current solutions on the access of juveniles to legal assistance. Therefore, in the opinion of non-governmental organisations and Commissioner for Human Rights, it does not guarantee children an appropriate level of safeguards. The juveniles, to gain state-funded legal aid, will still have to justify that they are not able to bear the cost of such assistance. Moreover, they will also have to convince the president of the court that in their case there is a justified need to provide the juvenile with legal assistance.</p> <p>Finally, yet importantly, the Act maintains the current provisions regarding the role of a lawyer in juvenile proceedings. According to the draft Act, the lawyers in such proceedings will be obliged to take into account the objective interest of a child. For example, this means that they will have a right to remain passive and not challenge courts' decisions placing the juveniles in correctional facilities, every time they will conclude that such a placement will have a positive effect on child's situation. Therefore, such provision might result in a possible violation of the child's right to defence.</p>
<p>Policy developments</p>	<p>The adoption of the amendment to the Act on Counteracting Domestic Violence resulted in the Ministry of Justice decision to develop a training programme for law enforcement officers on the new measures counteracting domestic violence.⁹⁶ The Ministry of Justice declares that thousands of police officers and military police officers will take part in the training. The role of the military police will be limited only to combating domestic violence in the group of military personnel members.</p> <p>In the years 2019-2020, the Institute of Justice System conducted two studies on children entering the conflict with the law. The first of the studies were aimed at</p>

⁹⁶ Poland, Ministry of Justice, Training for police officers who will help victims of domestic violence, available in Polish at <https://www.gov.pl/web/sprawiedliwosc/szkolenia-dla-policjantow-ktorzy-pomoga-ofiarom-przemocy-domowej>

	<p>assessing the effectiveness of deprivation of liberty imposed on children, especially in the context of children return to crime.⁹⁷ The second study concerned the impact of international standards on the juvenile proceedings.⁹⁸</p> <p>In 2020, the National School for Judges and Prosecutors developed three pieces of training connected with the rights of children and children participation in judicial proceedings. The pieces of training were addressed to judges, prosecutors, as well as their assistants and referred to:</p> <ul style="list-style-type: none"> • best practices concerning the regulation of parental contacts with children;⁹⁹ • proceedings concerning the 1980 Hague Convention on civil aspects of child abduction;¹⁰⁰ • contact with children: practical and legal aspect.¹⁰¹
<p>Other measures or initiatives</p>	<p>During the COVID pandemic, the Commissioner for Human Rights addressed a statement regarding the preparation of detention facilities for children to the epidemic situation.¹⁰²</p> <p>In March 2020, the Commissioner for Human Rights repeated its statement to the Minister of Justice regarding the implementation of European Parliament and Council Directive on procedural safeguards to children who are suspects or accused persons in criminal proceedings.¹⁰³</p>

⁹⁷ Włodarczyk-Madejska, J. (2020), [Efektywność środków izolacyjnych orzekanych wobec nieletnich](#), *Prawo w działaniu*, Vol. 43, pp. 172–210.

⁹⁸ Poland, Institute of Justice System, Standards on juvenile justice, available in Polish at: https://iws.gov.pl/wp-content/uploads/2019/10/IWS_Banaszak-P.-Burdziak-K. Standardy-post%C4%99powania-z-nieletnimi-raport-z-badania.pdf

⁹⁹ Poland, National School for Judges and Prosecutors, available in Polish at: <https://www.kssip.gov.pl/node/7074>

¹⁰⁰ Poland, National School for Judges and Prosecutors, available in Polish at: <https://www.kssip.gov.pl/node/6823>

¹⁰¹ Poland, National School for Judges and Prosecutors, available in Polish at: <https://www.kssip.gov.pl/node/6472>

¹⁰² Poland, Commissioner for Human Rights, available in Polish at <https://www.rpo.gov.pl/pl/content/koronawirus-stan-przygotowan-zak%C5%82adow-poprawczych-i-schronisk-dla-nieletnich-na-zagrozenie>

¹⁰³ Poland, Commissioner for Human Rights, General statement to the Minister of Justice on the Directive regarding procedural safeguards to children suspected of committing a crime, available in Polish at: <https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Ministra%20Spraw>

	<p>Both statements remain unanswered. On 29th September, the Commissioner for Human Rights asked the Prime Minister of Poland to force the Minister of Justice to answer the general Commissioner's general statement concerning the implementation 2016/800 Directive.</p>
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ch%20dla%20dzieci%20b%C4%99d%C4%85cych%20podejrzanyimi%20lub%20oskar%C5
%BConymi.pdf](#)

Chapter 7. Access to justice including crime victims

1. Victims' Rights Directive

The legislative changes introduced in 2020 in the area of victims' rights in Poland were not numerous.

On 31 March 2020, an amendment to the Criminal Procedure Code came into force, introduced by the 2nd Anti-COVID Act.¹⁰⁴ The new provision extended the protection of medical staff members who were victims of crime related to their professional activities.¹⁰⁵ As a precautionary measure, it is now possible to prohibit the accused of an offence committed against a member of medical staff in connection with the performance of medical care by that member, or against a person designated to assist a member of medical staff in connection with the performance of medical care, to approach the aggrieved party at the specified distance; to prohibit any contact; or to prohibit the publication of any content that violates legally protected rights of the aggrieved party, including via information technology systems or telecommunications networks.

The abovementioned prohibitions may be combined with the establishment of a financial guarantee.

Moreover, the prohibition to publish any content that violates legally protected rights of the victim includes the prohibition to publish that content and make it available otherwise, regardless of whether it was created by the defendant or any other person, via web portals constituting an electronic service within the meaning of the Act of 18 July 2002 on the Provision of Services by Electronic Means.

The duration of such prohibitions is determined taking into account the needs related to guaranteeing the due course of criminal proceedings and ensuring

¹⁰⁴ Poland, Act amending the Act on particular solutions related to prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, and certain other acts, 31 March 2020.

¹⁰⁵ Poland, Criminal Procedure Code, 6 June 1997, Article 276a.

adequate protection for the aggrieved party or their close relatives. The duration of the prohibition may be extended for a period exceeding 6 months in total in preparatory proceedings, at the request of the public prosecutor, by the court.

Since 24 June 2020, the abovementioned precautionary measures may also be applied to the defendant accused of stalking committed in connection with the profession pursued by the aggrieved party.¹⁰⁶

The most recent COVID-related legislation¹⁰⁷ has also provided for a possibility to conduct a questioning of a person in criminal proceedings, including a victim, remotely. Pursuant to the new provision of the Criminal Procedure Code,¹⁰⁸ questioning of a witness may take place with the use of technical devices enabling this procedural action to be conducted remotely based on a simultaneous direct transmission of image and sound. In proceedings before court, in a procedural action in the place of stay of the witness, a court clerk, judge assistant, or an official employed at the court in whose region the witness stays, shall participate. In the place of stay of a witness being questioned as per above, the following persons may be present instead of persons mentioned earlier: a Prison Service officer – if the witness is in prison or custody; a consular official – if the witness is a Polish national staying abroad.

It should also be noted that the COVID-19 pandemic resulted in hampering access to justice in Poland for all categories of persons seeking judicial protection, including crime victims. For instance, the 2nd Anti-COVID Act¹⁰⁹ suspended all time limits in court proceedings, with a few exceptions for the so-called urgent cases. It was the 4th Anti-COVID Act of May 2020¹¹⁰ that resumed the time limits within 7 days from the date of its entry into force. Moreover, Polish courts have not implemented any uniform solution related to submitting pleadings to courts during the pandemic. A 2020 study has revealed that the adopted solutions vary dramatically: from the normal practice of functioning registry offices, through the use of special containers, e-mail or

¹⁰⁶ Poland, Criminal Procedure Code, 6 June 1997, Article 276a(1a).

¹⁰⁷ Poland, Act on interest rate subsidies for investment loans offered to entrepreneurs affected because of COVID-19 and on simplified procedure for the approval of the agreement, 23 June 2020.

¹⁰⁸ Poland, Criminal Procedure Code, 6 June 1997, Article 177(1a)-(1b).

¹⁰⁹ Poland, Act amending the Act on particular solutions related to prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, and certain other acts, 31 March 2020.

¹¹⁰ Poland, Act amending certain other acts in reference to protective measures connected with the spread of the SARS-CoV-2 virus, 14 May 2020.

other registry offices in the same court circuit, to the sole possibility of submitting pleadings via post offices.¹¹¹

Furthermore, the Court Watch Poland foundation has assessed the practical application of the transparency of court proceedings and access to courts in June 2020.¹¹² In its report, the NGO points to the fact that a vast majority of courts' presidents (370 of 392, 94%) issued orders amending the rules of access to courts. In 35% of courts, the participation of members of the public in public hearings and sessions is expressly excluded. However, this prohibition applies disturbingly, according to the NGO, also to those courts where no regulation is present.

2. Violence against women

The most significant legislative development of 2020 in this regard in Poland was the adoption of the so-called anti-violence package. On 30 April 2020, the Parliament adopted an Act amending the Code of Civil Procedure and the Act on Counteracting Domestic Violence.¹¹³ The amendment has modified the procedures regarding securing the safety of domestic violence victims, the vast majority of whom are women, and provided Police officers with new competences. The aim is to isolate the perpetrator from the victim of violence rapidly.

First, the amendment modified the provisions regarding apprehension of a perpetrator posing a direct threat to human life or health. According to the amendment, the police officer, before deciding on perpetrator's apprehension, should be obliged to take into account specific circumstances described by law, e.g. personal characteristic of a victim (age, disability etc.), previous reports regarding domestic violence occurrence and psychiatric condition of the perpetrator.

¹¹¹ Helsinki Foundation for Human Rights, *Dostęp do sądu w dobie pandemii. Analiza – część druga*, Warsaw, 2020, available at: <https://www.hfhr.pl/wp-content/uploads/2020/04/Dostep-do-sadu-w-dobie-pandemii2-FIN.pdf> (accessed on: 5.10.2020).

¹¹² Court Watch Poland, [Report on obedience of the principle of public trial in Poland](#), Toruń, 25 June 2020.

¹¹³ Poland, [Act amending the Code of Civil Procedure and certain other acts](#), 30 April 2020.

Second, the Police will have the power to order the perpetrator to leave immediately the premises occupied by the perpetrator and the victim of domestic violence. Furthermore, the Police will also be able to issue a restraining order for the perpetrator of domestic violence. The power to issue such orders will be independent from the power to apprehend the perpetrator, as well as its effectiveness will not be premised on the perpetrator's consent. The scope of the order may include the obligation to leave the premises and its direct proximity or the prohibition of approaching the premises and its direct proximity, or both. The new law does not limit the duration of the order.

The Police has also been obliged to provide victims of domestic violence with sufficient information regarding further proceedings to obtain permanent restriction order, initiate criminal proceedings against the perpetrator of domestic violence or gain appropriate support. The burden of having to contact the support organisation remains, however, on the victim.

According to the Act, the Police will also be obliged to verify at least three times whether the perpetrator of domestic violence is not violating the order to leave the premises occupied by the victim. In the case of violation of the order, the sanction would be arrest (up to 30 days), limitation of liberty or fine.¹¹⁴

Other newly introduced solutions include, first, the introduction of a new type of proceedings for imposing an obligation on the violence perpetrator to leave premises occupied together with the victim and its direct proximity, and to refrain from approaching them. The proceedings should be initiated upon request and the ruling should be delivered by court within a month. Second, there are several elements that should accelerate the proceedings, for instance the motion can be submitted using an official form; documents could be delivered by court via the Police; the court should adjudicate on a motion within 3 days; the appeal proceedings should conclude within a month.

In a ruling, the court should establish an area or distance that should be kept by the perpetrator, as well as how frequently the Police should control the

¹¹⁴ Poland, [Code of Petty Offences](#), 20 May 1971, Article 66b.

perpetrator's compliance with this obligation. The court's decision should be enforceable with immediate effect.

The amendment is about to come into force on 30 November 2020.

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

1. CRPD policy & legal developments

In 2020, the Governmental Plenipotentiary for Persons with Disabilities announced that his office would prepare new legislation that would regulate the rights of persons with disabilities systemically and following the CRPD. According to the Plenipotentiary, the new law should guarantee to the persons with disabilities equal access to work, culture, education, and health care.¹¹⁵ Until December 2020, there has been no further information on the status of these works.

In 2020, the government presented the draft "Strategy for persons with disabilities" for social consultations. The strategy was prepared for almost four years and its main aim is the implementation of the CRPD. The strategy concentrates on six areas: independent living, accessibility, education, work, social security, health, and awareness building. Furthermore, the strategy establishes a national system of coordination of works for the persons with disabilities.¹¹⁶ The CRPD Committee pointed out the lack of such a strategic coordination centre during Poland's review in 2018. Within the process of social consultation, the NGOs' representing persons with disabilities presented their opinions and remarks concerning the draft document.

On 30 September 2020, the deadline for the state and local authorities to establish the accessibility coordinators in their offices has passed. According to the Act adopted in 2019 on providing accessibility to persons with special

¹¹⁵ Niepełnosprawni.pl, Zapowiedź rewolucji. Rozmowa z Pawłem Wdówikiem, nowym Pełnomocnikiem Rządu, available at: <http://www.niepelnosprawni.pl/ledge/x/913822>

¹¹⁶ Poland, Council of Minister's resolution on adoption of the Strategy for Persons with Disabilities 2020-2030 (Uchwała Rady Ministrów w sprawie przyjęcia dokumentu Strategia na rzecz Osób z Niepełnosprawnościami 2020 – 2030), available at: <https://legislacja.gov.pl/projekt/12334055/katalog/12689144#12689144>

needs¹¹⁷, each unit of the central state authority, as well as local self-government unit, has to appoint an accessibility coordinator. The main tasks of the coordinator include preparing and coordinating the implementation of the accessibility plan adopted by the institution and monitoring the institution's activity from the perspective of improving accessibility. According to media reports, there is no unified practice among the state's and local government authorities, when it comes to appointing the coordinators. In some local government offices, coordinators are delegated to work solely related to the scope of competences of the coordinators whereas in some offices the coordinators share these duties with their other duties in the offices.¹¹⁸ The Act on providing accessibility to persons with special needs specifies financial penalties for the state and local authorities who do not comply with the introduced obligations.

In July 2020, the Polish Parliament started works on draft legislation concerning the benefits for persons taking care of persons with disabilities. In the light of the current provisions, the amount of social benefit granted to the carers of persons with a disability is different depending on the moment when the person was diagnosed with a disability - the carers of persons who were diagnosed as children receive higher benefits than carers of persons who were diagnosed with disability as adults. In 2014, the Constitutional Tribunal deemed these provisions unconstitutional, yet the Parliament has not implemented Tribunal's decisions. The legislative process is still ongoing.¹¹⁹

2. CRPD monitoring at national level

¹¹⁷ Poland, Act on providing accessibility to persons with special needs (Ustawa z dnia 19 lipca 2019 r.

o zapewnianiu dostępności osobom ze szczególnymi potrzebami), 19 July 2019

¹¹⁸ Prawo.pl, Specjalni koordynatorzy mają zadbać o dostępność urzędów dla osób o szczególnych potrzebach, available at: <https://www.prawo.pl/samorzad/koordynator-do-spraw-dostepnosci-musi-funkcjonowac-w-kazdym,503397.html>

¹¹⁹ Ombudsman, Szansa dla opiekunów osób z niepełnosprawnością, Senat podjął prace nad wykonaniem wyroku TK z 21 października 2014 r., available at: <https://www.rpo.gov.pl/pl/content/szansa-dla-opiekunow-osob-niepelnosprawnoscia-senat-podjal-prace-nad-wykonaniem-wyroku-tk>

There have been no systemic developments concerning the implementation of the CRPD.

Only in March 2020, the Governmental Team for the implementation of the CRPD organised one working session. During this session, the experts discussed problems related to access to education for pupils with disabilities. According to the representative of the Ministry of the National Education, the Ministry prepared proposal of changes in the education system that would be adjusted to the needs of children with disabilities. Furthermore, the representative of the Ministry of Health informed about the progress concerning the implementation of CRPD Committee recommendations from 2018 in the area of institutional care for persons with disabilities.¹²⁰

¹²⁰ Poland, Governmental Plenipotentiary for Persons with Disabilities, Posiedzenie międzyresortowego Zespołu ds. wykonywania postanowień Konwencji o prawach osób niepełnosprawnych, available at: <http://niepelnosprawni.gov.pl/a,976,posiedzenie-międzyresortowego-zespołu-ds-wykonywania-postanowien-konwencji-o-prawach-osob-niepelnosprawnych>

Annex 1 – Promising Practices

Thematic area	<p>EQUALITY AND NON-DISCRIMINATION</p> <p>Please provide one example of a promising practice to tackle discrimination against older people or LGBTI people such as awareness raising campaigns or ethical codes for healthcare staff held in your country in 2020. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2020 relevant to equality and non-discrimination of older people or LGBTI people, preferably one conducted by a national equality body.</p>
Title (original language)	Solidarnościowy Korpus Wsparcia Seniorów
Title (EN)	Solidarity Senior Support Corps
Organisation (original language)	Polish
Organisation (EN)	-
Government / Civil society	Government
Funding body	central government subsidizing units of local self-government
Reference (incl. url, where available)	https://www.gov.pl/web/koronawirus/informacje-dla-seniorow
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	20 October - 31 December 2020.
Type of initiative	Social assistance to the elderly
Main target group	The elderly (70+)

Indicate level of implementation: Local/Regional/National	National and local
Brief description (max. 1000 chars)	The program is designed to help with the delivery of necessities to senior citizens to reduce the need to leave home during the pandemic for safety reasons. It operates a helpline for the elderly, redirecting their requests to the local social welfare centers. The centers implement the program on the municipal level (organizing the delivery to the elderly's home). The municipalities receive subsidies for the implementation of the program from the state budget (100 million PLZ allocated for this purpose).
Highlight any element of the actions that is transferable (max. 500 chars)	The elderly can be provided with necessities, including food and personal hygiene products. The elderly cover the costs of purchases. The elderly assistant may also perform (free of charge) activities related to daily operations, e.g. official matters (if the scope of these services does not require authorisation from the Senior or the provision of sensitive data), walking a dog, etc.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	An elderly person aged 70 and over who decides to stay at home due to the pandemic can call the national helpline and request assistance in daily routines that require leaving one's home.
Give reasons why you consider the practice as having concrete measurable impact	The program could limit the spread of the pandemic among the elderly.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The program is not country-specific and it is possible to coordinate similar actions in other settings (towards other vulnerable groups) or Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and	The elderly seeking assistance specifies the scope of their needs and covers the costs of purchased goods.

implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	Not applicable

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide one example of a promising practice to address racism and xenophobia in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	Collective Power to Incite Change
Title (EN)	Collective Power to Incite Change
Organisation (original language)	Stowarzyszenie Nomada, Hakoach
Organisation (EN)	Association Nomada, Hakoach
Government / Civil society	Joint action by the city of Łódź and civil society
Funding body	EVZ Foundation and the city of Łódź
Reference (incl. url, where available)	https://uml.lodz.pl/aktualnosci/artykul/lodz-otwarta-naroznorodnosc-rusza-antyrasistowska-kampania-wmpk-id35034/2020/6/15/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Start date: 15 June 2020
Type of initiative	campaign
Main target group	Residents of Łódź
Indicate level of implementation: Local/Regional/National	local
Brief description (max. 1000 chars)	A video (animation) on how to react to racial harassment is being screened in the public transportation in Łódź. It is particularly important since Łódź has high rates of hate

	crimes and because public transportation happens to be a surrounding where many hate crimes are committed.
Highlight any element of the actions that is transferable (max. 500 chars)	A short animation, which raises awareness about racially motivated violence.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The video can be screened not only on busses and trams but also in social media.
Give reasons why you consider the practice as having concrete measurable impact	Average number of users of public transportation who had an opportunity to watch a video. Number of acts of violence prevented/ mitigated on public transportation in Łódź. Number of cases where a by-stander gave his/her support to the targeted person (number of police reports).
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The video can be multiplied in any language and screened on any type of public transportation as long as they have screens.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The practice was developed in cooperation with a Hakoach organization, bringing together Jews residing in Łódź, and Nomada Association – the organization with several years of experience of supporting victims of racially motivated violence.
Explain, if applicable, how the practice provides for review and assessment.	-

Thematic area	<p>ROMA EQUALITY AND INCLUSION</p> <p>Please provide one example of promising practice in relation to the legal and policy developments in regard to Roma/Travellers (or any group covered by this term as per the Council of Europe definition) in 2020 that relate to the (1) application of the EU Framework on national Roma integration strategies and (2) the preparations for the new post-2020 initiative on Roma equality, inclusion and participation or in relation to any measures in your country in 2020 to address Roma inclusion and prevent discrimination, hate crime and hate speech with a particular focus on COVID-19.</p>
Title (original language)	-
Title (EN)	-
Organisation (original language)	Akceptacja, Wielkopolskie Stowarzyszenie Lokatorów
Organisation (EN)	Acceptance, Wielkopolskie Tenants Association
Government / Civil society	Civil society
Funding body	The City of Poznań
Reference (incl. url, where available)	https://www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20Prezydenta%20Poznan%2C%2022.04.2020.pdf ; http://akceptacja.org.pl/pierwszy-etap-pomocy-w-dobie-pandemii-covid-19-za-nami/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	13 March 2020 – 15 May 2020
Type of initiative	Agreement between the city of Poznań and a civil society organization Akceptacja
Main target group	Roma migrants living in Poznań

Indicate level of implementation: Local/Regional/National	local
Brief description (max. 1000 chars)	<p>In the early days of COVID-19 pandemic, the city of Poznań has reached out to the civil society organization Akceptacja which support the community of Roma migrants (of Romanian origin) living in the settlement in Poznań. The agreement drawn between the parties stipulated that the NGO would introduce prevention, screening, and medical services as well as provide reliable information to the Roma community during the pandemic. Akceptacja was supposed to visit the settlement regularly with their ambulance and a team of medical professionals as well as local community workers to try to prevent the spreading of the coronavirus and monitor the situation. In reality much more has been done: the activists provided personal protection equipment, food packages, support to mothers of newborn babies and other social assistance. The key elements worth highlighting are: early intervention and relationship of trust between the organization, community workers and the city, which made it possible to support the community without lengthy applications for funding and negotiations, and allowed for the targeted support based on current needs of the community. 130 persons were screened, examined and provided with basic health information. 134 persons received food packages. 30 persons received medical treatment (non-virus related).</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>Agreement between the city and a civil society organization working with the community drawn up upon early signs of crisis, very flexible and based on mutual trust, involving medical practitioners and community workers.</p>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>The model of the cooperation between the city, civil society and community workers may be recreated in any crises. Furthermore, the trust build between the parties lies foundation for the future undertakings.</p>
Give reasons why you consider the practice as having concrete measurable impact	<p>It should be quite easy to measure number of people screened, diagnosed or tested, number of personal protection equipment distributed, and number of visits in the settlements.</p>

Give reasons why you consider the practice as transferable to other settings and/or Member States?	<p>The terms of agreement being open and flexible</p> <p>The support provided based on the on-the -spot needs assessment</p> <p>Reliance in the expertise of the organization which works closely with the community</p>
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The support provided to the community was based on current needs identified with their participation on the beneficiaries' occasion of regular visits to the settlements. Due to the very flexible provisions of the agreement, the civil society was trusted to adjust their activities to the needs assessment made in the field.
Explain, if applicable, how the practice provides for review and assessment.	Each visit in the settlement was recorded in the daily written report, which was submitted to the city of Poznań.

Thematic area	<p>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</p> <p>Provide one example of a promising practice related to any of the topics addressed in the chapter – i.e. in relation to data protection, and/or artificial intelligence systems - in 2020.</p>
Title (original language)	Zgłoś to!
Title (EN)	Report it!
Organisation (original language)	Fundacja Dajemy Dzieciom Siłę, Rzecznik Praw Obywatelskich

Organisation (EN)	Empowering Children Foundation, Ombudsman's Office
Government / Civil society	Government and civil society
Funding body	Empowering Children Foundation, Ombudsman's Office
Reference (incl. url, where available)	https://zglos.to/#/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Since 28 April 2020
Type of initiative	Reporting, protecting children, preventing harmful online content
Main target group	Children
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Empowering Children Foundation together with the Ombudsman's Office launched a campaign "Report it!". Within the campaign, the organizations created a website that allows internet users notify relevant authorities about the online harmful content. The website presents guidelines how to prepare an official notification to the prosecution office or the police regarding the found online harmful content. Furthermore, the website includes instructions for parents on how to deal with situations in which their children are exposed to harmful online content.
Highlight any element of the actions that is transferable (max. 500 chars)	The concept of creating a hub of information concerning notifying the relevant authorities about the harmful online content could be considered as the transferable aspect of this campaign.

<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The website is a sustainable tool as it provides information that will not become outdated in the near future, thus both children and parents may use it on daily basis.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>According to the Empowering Children Foundation and the Ombudsman's Office, almost 85% of Poles had at least once saw harmful online content (including e.g. hate speech, violence or pornography); however, this content is rarely reported to the relevant authorities. By providing a website that presents easy to understand and concrete guidance on how to report online content that might be harmful for children, the campaign organizers' aim at improving the practice of combating the harmful online content.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The practice is universally applicable, both in other settings and/or in Member States; however it may require adjustments to the other Member State's legal order.</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>N/A</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>N/A</p>

Thematic area	RIGHTS OF THE CHILD Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Jak bezpiecznie prowadzić lekcje online? Poradnik dla nauczycieli i dyrektorów
Title (EN)	How to conduct remote education safely? Guidebook for teachers and school principles.
Organisation (original language)	Rzecznik Praw Obywatelskich
Organisation (EN)	Commissioner for Human Right
Government / Civil society	Government
Funding body	Commissioner for Human Rights
Reference (incl. url, where available)	https://www.rpo.gov.pl/sites/default/files/Poradnik_nauczyciele_dyrektorzy.pdf
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	17 April 2020
Type of initiative	Guidebook
Main target group	Teachers
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	In March 2020, the government of Poland announced lockdown and closed schools. It forced the Polish system of education to rapidly transit to remote education and caused severe difficulties connected with lack of digital competences of teachers, principals and parents. They manifested inter alia in the problem of third persons and students actions to disturb online lessons. Teachers had to face the problem of anonymous persons joining online lessons, shouting, swearing, and making fun out of the teachers.

	In response to this problem, the Commissioner of Human Rights asked a group of experts from non-governmental organisations, unions, school and IT experts, to develop a guidebook addressed to teachers and schools' principals. The guidebook "How to safely conduct online lessons?" is available online.
Highlight any element of the actions that is transferable (max. 500 chars)	The idea of developing a guidebook regarding threats to online education and possible solutions has to be considered as easy – transferrable to other member states.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The practice has to be assessed as sustainable, as it is aimed at developing teachers' digital competences, and searching for new, safe methods of teaching children remotely. Therefore, it may have also significant importance in the post-pandemic period, guaranteeing access to regular education and contact with teachers for children with disabilities, staying abroad, or those who are suffering from diseases.
Give reasons why you consider the practice as having concrete measurable impact	The effects of the abovementioned good practice might be assessed by the number of incidents regarding interruption into the communication between teachers and students.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The COVID-19 pandemic had also a large impact on other member states, forcing the majority of them to lock down their schools. Therefore, it might be assumed that problems encountered with remote education in Poland, occurred also in other states.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The process of developing guidebook has to be considered as inclusive. It has the potential to include stakeholders and all relevant actors of civil society in the process of design, planning, evaluation, review assessment and implementation of the guidebook.

Explain, if applicable, how the practice provides for review and assessment.

The guidebook was presented by the office of Commissioner for Human Rights. This clearly indicates a public body responsible for developing the guide, to which individuals may send comments and questions regarding the guidebook.

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide one example of a promising practice relating to the topics addressed in this chapter.
	No promising practice has been identified for this thematic area.

Thematic area	DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	Program Opieka wytchnieniowa. Edycja 2020
Title (EN)	Respite care program. 2020 edition
Organisation (original language)	Ministerstwo Rodziny Pracy i Polityki Społecznej we współpracy z jednostkami samorządu terytorialnego
Organisation (EN)	Ministry of Family Labour and Social Policy in cooperation with local self-government units
Government / Civil society	Government
Funding body	Ministry of Family Labour and Social Policy
Reference (incl. url, where available)	http://niepelnosprawni.gov.pl/a,978,opieka-wytchnieniowa-bardziej-dostepna
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	13 March 2020 – 31 March 2020

Type of initiative	Support initiative
Main target group	Caregivers of persons with disabilities
Indicate level of implementation: Local/Regional/National	Local
Brief description (max. 1000 chars)	In Poland, there is no system of support for caregivers of persons with disabilities. Until 2019, only few units of the local self-governments offered special support and assistance to the caregivers of persons with disabilities. In 2019, the Ministry of Family Labour and Social Policy launched a funding program for local governments to organize the system of respite care in their local communities. The 2020 edition of the program was launched in March 2020. The Ministry dedicated 80 million PLN (approx. 20 million EUR) in open call for proposals for local governments. The form of respite care offered within the program include organizing daily care and round-the-clock care for persons with disabilities and psychological support for caregivers.
Highlight any element of the actions that is transferable (max. 500 chars)	The process of distributing the funds within the national program could be considered as transferable.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	This is the second edition of the program and the Ministry declares that this program will be further developed in the future.
Give reasons why you consider the practice as having concrete measurable impact	There is no central system of support for caregivers of persons with disabilities. Furthermore, it seems that in certain area of designing the policies towards persons with disabilities the situation of their caregivers may be overlooked. Providing support to the local self-government units to provide such services may fill in the systemic gap and guarantees the proper recognition of the needs of caregivers in their local communities.
Give reasons why you consider the practice as transferable to	The practice is universally applicable; both in other settings and/or Member States, however providing proper funding may be a challenge in transferring the practice to other Member States.

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

Annex 2 – Case Law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination against older people or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
Decision date	15.07.2020
Reference details	VIII SA/Wa 42/20
Key facts of the case (max. 500 chars)	<p>On June 17, 2019, the Commune passed a resolution declaring “The Commune [...] free from LGBT ideology”. The resolution indicated that, for the sake of the family and freedom, the municipality will not interfere in the private sphere of Polish families and will support parents’ rights to raise children in accordance with their own convictions. The resolution also declared that children should be protected against the promotion of early sexualisation and homosexuality (so-called “gay propaganda”). Further, it declared that the municipality would be faithful to the national and state tradition in carrying out its public tasks. The resolution was challenged by the Ombudsman, invoking a number of constitutional rights guarantees. It argued among others that a declaration is an authoritative act, even if it does not establish rights and obligations of private entities, but contains instructions for other entities within the public administration (in this case – for directors of schools and other educational institutions run by the commune).</p>
Main reasoning/argumentation (max. 500 chars)	<p>The Regional Administrative Court held the contested resolution invalid in its entirety. It found that the resolution was authoritative and did not have an explicit and specified legal basis in a statutory law. Moreover, it violated a number of constitutional provisions and Article 21 TFEU. In particular, the contested resolution violated the prohibition of discrimination under Article 32 para. 2 of the Polish Constitution.</p>
Key issues (concepts, interpretations) clarified	<p>The Court confirmed that the declarations contained in the contested resolution could not be regarded as a “non-binding position of the Municipal Council of a non-authoritarian nature”. On the contrary, they were authoritative in their instruction to discriminate against the LGBTI</p>

<p>by the case (max. 500 chars)</p>	<p>persons in education, employment and services. The Court found that the municipality acted without a legal basis because it entered into the competence of the legislator, assigning itself the power to interpret and implement the education law, by indicating which organizations may establish cooperation with schools and to what extent, and which ones may not, and even determine the scope of the content to be conveyed in schools or educational institutions.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Court rejected the argumentation of the third party intervener and the Prosecutor General in this case who contended that the resolution only opposes the so-called LGBT ideology, and not LGBT people. It explained that such position does not take into account the social context and the real effects that such resolution has on the life of LGBT persons in the municipality.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>„zaskarżona uchwała ustanawiając strefę wolną od LGBT narusza art. 21 ust. Traktatu o funkcjonowaniu UE (Dz.Urz. UE z 2016 roku, C 202,s.1) poprzez ograniczenie swobody przemieszczania się, poprzez zniechęcanie obywateli UE, którzy identyfikują się jako osoby LGBT do przebywania na terenie gminy [...] oraz związanych z nim naruszenie art.7, art.11 ust.1, art. 45 Karty Praw Podstawowych UE(Dz.Urz. UE z 2016 roku, C 202) poprzez naruszenie prawa do poszanowania życia prywatnego i rodzinnego, wolności wypowiedzi oraz zakazu dyskryminacji ze względu na orientację seksualną i tożsamość płciową.”</p> <p>*</p> <p>„By establishing an LGBT-free zone, the contested resolution violates Article 21 paragraph of the Treaty on the Functioning of the EU (OJEU 2016, C 202, p. 1) by restricting freedom of movement by discouraging EU citizens who identify themselves as LGBT persons from residing in the municipality [...] and the related violation of Article 7, Articles 11(1), 45 of the Charter of Fundamental Rights of the EU (OJEU 2016, C 202) by violating the right to respect for private and family life, freedom of expression, and the prohibition of discrimination on grounds of sexual orientation and gender identity.”</p>

<p>Thematic area</p>	<p>RACISM, XENOPHOBIA AND RELATED INTOLERANCE. Please provide the most relevant high court decision concerning the application of <u>either</u> the Racial Equality Directive <u>or</u> the Framework Decision on racism and xenophobia, addressing racism, xenophobia and other forms of intolerance more generally.</p>
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Decision date	20 March 2020
Reference details	Case number XIV Kp 3434/19 Judgement by the District Court for Warsaw-Mokotów
Key facts of the case (max. 500 chars)	The decision was issued because of the appeal from the decision by the Regional Prosecutor to discontinue criminal investigation against the authors of a campaign video for the Law and Justice party in the local elections in 2018. The parties appealing the discontinuation argued that while the video encourages voters to vote for the party, it does so by inciting fear of Muslims and refugees, depicting them as a threat to national security and personal safety of Polish citizens.
Main reasoning/argumentation (max. 500 chars)	The court stated that the Prosecutor has failed to take into account and investigate the impact that stereotypical depiction of certain groups may have on the approach and behaviour of persons who watch the video.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	When deciding on whether the act committed by publication of a video meets the definition of incitement to hatred, one must precisely establish the reaction of the "average" person to the video, as well as the intent of the person who contracted the making of the video, not only its creators
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court quashed the decision of the Prosecutor ordering him/her to continue the investigation and admit more evidence, such as the expert sociological opinion.
Key quotation in original language and translated into English with reference details (max. 500 chars)	Powielanie stereotypowego przedstawiania grup może w świadomości odbiorców nakłaniać do skrajnego i nieprzychylnego stosunku odbiorców do tych grup. The reproduction of stereotypical depiction of certain groups of people may cause radical and unfavourable approach to this group.

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

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. in relation to data protection, and/or artificial intelligence systems.
Decision date	25 August 2020
Reference details	I OSK 3325/19 Supreme Administrative Court
Key facts of the case (max. 500 chars)	<p>In 2017, the applicant submitted a motion to the Chief of the National Remembrance Institute to clarify the information about the applicant in his personal records. The Institute is a government archive authority in charge of prosecution, archives, education, and, since 2007, lustration, in relation to crimes against the Polish nation. The Institute is also in charge of the personal archives from the communist period. The applicant submitted a motion to the Chief of the Institute to clarify the records in his personal files. The Chief of the Institute informed the applicant that the Institute would include the information on the civil court judgement confirming the applicant's clarified information; however, the Institute will not remove the information entirely from his files.</p> <p>The applicant appealed to the Data Protection Office that, however, did not find grounds to launch the proceeding. Then, the applicant challenged the decision to the Voivodeship Administrative Court that also discontinued the proceeding. The applicant brought the cassation appeal to the Supreme Administrative Court, which lifted the Voivodeship Administrative Court's decision. In the proceedings before the Data Protection Office and the administrative courts, the applicant argued that the provisions of GDPR should be directly applicable in his case.</p>

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>In this case, the National Administrative Court decided that the provisions of GDPR should be applicable in the cases concerning the information stored in the national archives. In the opinion of the Court, assuming that GDPR provisions are not applicable in such cases would have led to a situation in which the data protection and the scope of the data would have been left without any kind of state authorities supervision, even in situations in which the collected data would have not reflected to reality.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court decided that the provisions of the GDPR should be also applicable in the case of the national archives.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The decision of the Data Protection Authority refusing launching the proceeding was nulled and the authority needs to re-open the case.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>“organ, jak i Sąd pierwszej instancji, przyjęte przez siebie stanowisko oparli na poglądzie, zgodnie z którym RODO nie obejmuje swoim zakresem zagadnień dotyczących ochrony dziedzictwa narodowego, czy też upamiętniania walki o pamięć historyczną oraz dokumentowania zbrodni dokonywanych przez reżimy totalitarne. [...] Takie założenie oznaczałoby jednak, że dane znajdujące się w rejestrach Instytutu Pamięci Narodowej pozostają poza jakąkolwiek kontrolą organów powołanych do przetwarzania i ochrony danych osobowych, nawet jeżeli nie odpowiadają rzeczywistości. W rezultacie, w odniesieniu do danych niepełnych lub nieprawdziwych brak byłoby jakiegokolwiek trybu ich weryfikacji. (...) Dane archiwalne, gromadzone w bazach IPN dotyczą niejednokrotnie tych obszarów życia, które odnoszą się właśnie do czci oraz dobrego imienia, a w sytuacji, gdy są one niezgodne z prawdą, to wówczas dochodzi o naruszenia tych, konstytucyjnie chronionych, wartości. Wypada w tym miejscu zwrócić uwagę na treść pkt 158 preambuły RODO, który expressis verbis przewiduje możliwość stosowania regulacji RODO do przetwarzania danych osobowych w celach archiwalnych”</p> <p>"The Data Protection Authority and the Court of the first instance based their decisions on the assumption that GDPR is not applicable to the issues concerning national heritage [...]"</p>

	<p>and documenting the crimes committed by totalitarian regimes. [...] Such an assumption would have meant that the records archived by the National Remembrance Institute would be exempt from any data protection authorities even if the records do not reflect the reality and facts. As a result, there would be no possibility to verify the false or partial information [...] Archives collected by the Institute concern these aspects of life that usually are related to good name and reputation. In a situation in which these information were not true, then these values such as good reputation would be exposed to violation. At this point it is worth mentioning point 158 GDPR that explicitly provides the possibility of applying GDPR provisions to data gathered in archives purposes"</p>
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Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision relating to the topics addressed in this chapter.
Decision date	22 September 2020
Reference details	Ruling of the Administrative Court in Poznań, case no. II SA/Po 506/20, LEX no. 3060510.
Key facts of the case (max. 500 chars)	<p>The case concerns the rights of children without parental care.</p> <p>The applicant in this case was taking care of a child of her husband. Biological mother of the child died. In the same time, the family court initiated proceedings to suspend the parental authority of child's father (the husband of the applicant) and ruled that the applicant will be a foster family to the child.</p> <p>The applicant asked the social welfare centre to provide her with child benefit. The social welfare centre denied the applicant's right to obtain child benefit, arguing that she did not meet statutory requirements to obtain such benefit, as she have not applied for the adoption of the child. According to the Act of 11 February 2018 on the state support in raising children, only actual guardian who applied for the adoption of the child were able to receive child benefit.</p> <p>The applicant decided to challenge the decision of a social welfare centre. In the complaint to the Administrative Court, she argued that the state violated rights of her child protected under the Constitution of Poland and the Convention on the Rights of the Children.</p>
Main reasoning/argumentation (max. 500 chars)	The Administrative Court in Poznań quashed the decision of social welfare centre. It argued that the provisions of the Act on the state support in raising children are in contradiction to the provisions of Polish Constitution guaranteeing equal treatment.

	<p>The Court indicated that decision of the social welfare centre deprived child's guardian right to receive support from the state, despite the fact, that the public authorities imposed on the same guardian specific obligations connected with taking care of the child.</p> <p>According to the Court, such situation violated child's rights guaranteed under the Convention on the Rights of the Children, especially the right of unaccompanied children to receive specific support from the state (art. 20). Moreover, the Court ruled that the provisions of the Polish Constitution and the Convention on the Rights of the Children should be directly applicable. The Court indicated that the social welfare centre, during the re-examination of the case should focus on child best interest, rather than the precise meaning of the Act on the state support in raising children.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The case concerns the equal treatment of children deprived of parental care and the possibility of their guardians to receive child benefit. Moreover, it also affects the courts' right to apply directly the Constitution of Poland and the Convention on Children Rights.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The result of the case will have an impact on the situation of unaccompanied children. Because of the judgement, the discriminatory requirements set in the Act on the state support in raising children will become meaningless.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>The person responsible for the taking care of the child, to whom the State has entrusted the child's upbringing and development (...) has the right to effectively demand State's assistance in providing this care, including material assistance (...).</p> <p>Ruling of the Administrative Court in Poznań, case no. II SA/Po 506/20, LEX no. 3060510.</p> <p>Osoba odpowiedzialna za utrzymanie dziecka, której Państwo powierzyło pieczę nad jego wychowaniem i rozwojem, (...), ma prawo skutecznego domagania się od tegoż Państwa pomocy w sprawowaniu tej opieki, w tym również pomocy materialnej, (...).</p>

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide the most relevant high court decision relating to the topics addressed in this chapter.
Decision date	25 June 2020
Reference details	Decision of the Supreme Court of 25 June 2020, case no: I KZP 4/20
Key facts of the case (max. 500 chars)	K.T. was charged with the crime of evading the duty of alimony for his child. The court in which the proceedings were supposed to start ordered to indicate a proper representative of the minor because the mother of the child was not authorised to act as one because the defendant was the child's father. The court's order was appealed by the public prosecutor, who invoked an exception to the rule – namely, a situation in which the court proceedings is related to maintenance for the child due from the parent. The court decided to refer a legal question to the Supreme Court, indicating a need for substantial interpretation of the legal issue.
Main reasoning/argumentation (max. 500 chars)	According to Article 98 of the Family and Guardianship Code, parents are legal representatives of their child. It is, however, prohibited for a parent to be such a representative in court proceedings to which the child and the other parent are parties. In such circumstances, a legal guardian (e.g. an attorney) should be appointed for the child. In 2010 the Supreme Court has ruled that this prohibition does not apply to the situation where one parent files, on behalf of the child, a motion for prosecuting the other parent for the crime of evading carrying out the duty of alimony (as described in Article 209 of the Criminal Code). In the decision of 25 June 2020, the Supreme Court has confirmed that the parent who filed a motion for prosecution and thus initiated the criminal proceedings against the second parent is also authorised to act as a legal representative of the minor child throughout the entire proceedings.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Court was asked to clarify whether in criminal proceedings concerning crimes described in Article 209 of the Criminal Code (in general, evasion of carrying out of a duty of providing alimony) a minor victim can be represented by a parent, where the defendant is the other parent of the victim. If the answer is negative, should such minor victim be provided with a legal guardian in order to be represented properly in the proceedings, pursuant to Articles 98(2), 98(3) and 99 of the Family and Guardianship Code.

<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Supreme Court has refused to deliver a separate resolution on the interpretation of the submitted legal issue. The Court reiterated that there was no need for a substantial interpretation of the issue but only for a clarification of the Supreme Court's own jurisprudence. In particular, the Supreme Court's decision of 25 June 2020 confirmed the validity and relevance of reasoning already presented in a resolution of 7 judges of 30 September 2010 (I KZP 10/10), in which the Court stated that it was permissible for a parent of a child to file a motion for prosecution, on behalf of the child, against the other parent with regard to evasion of carrying out of a duty of providing alimony for the child's maintenance.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>Czynności prawne podejmowane przez przedstawiciela małoletniego pokrzywdzonego (dziecka) w postępowaniu karnym prowadzonym o przestępstwo z § 1 lub 1a art. 209 k.k. przeciwko rodzicowi dziecka, są czynnościami prawnymi dotyczącymi m.in. należnych dziecku od tego rodzica środków utrzymania i wychowania, w rozumieniu art. 98 § 2 pkt 2 k.r.o., zatem prawa małoletniego w tym postępowaniu może wykonywać drugi z rodziców.</p> <p>Legal actions exercised by a representative of an aggrieved party who is a minor (a child) in criminal proceedings against a parent of the child concerning a crime described in Articles 209(1) or 209(1a) of the Criminal Code constitute legal actions related to, among others, the child's living and upbringing expenses due from the parent, as understood in Article 98(2)(2) of the Family and Guardianship Code, therefore the rights of the minor in this proceedings can be exercised by the other parent.</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 making reference to the CRPD or employing the CRPD in their reasoning.
Decision date	20 February 2020
Reference details	II SA/Rz 1265/19
Key facts of the case (max. 500 chars)	MB is a primary caregiver of her daughter with disability of whom she took care for over 40 years. Due to her health condition, MB was not able to work full time. Since 2018, MB was entitled to pension, however due to her limited work period, she qualified only for the lowest pension scheme (878 PLN ca. 200 EUR) whereas the nursery benefit was much higher (1830 PLN ca. 450 EUR). According to law, if a person is entitled to pension, regardless its amount, they cannot receive the nursery benefit.
Main reasoning/argumentation (max. 500 chars)	Voivodship Administrative Court in Rzeszów decided that a situation in which a person who is a primary caregiver of a person with disability does not have a possibility to choose between the right to receive pension or the nursery benefit is discriminatory.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, the court decided that the right to pension could not automatically deprive someone from the right to apply for nursery benefit. In the opinion of the court, such a situation would be discriminatory towards the caregivers of persons with disabilities who would receive the pension in an amount smaller than the amount of the nursery benefit.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	In the result of this judgement, MB was entitled to receive the nursery benefit.
Key quotation in original language and translated into English with reference details (max. 500 chars)	Osoby pobierające prawo do emerytury i to w niższej wysokości niż świadczenie pielęgnacyjne, przede wszystkim ze względu na art. 32 Konstytucji RP, także powinny posiadać możliwość dokonywania wyboru pomiędzy wykluczającymi się świadczeniami z systemu zabezpieczenia społecznego.

	<p>First and foremost in relation to Article 32 of the Constitution (the prohibition of discrimination), persons entitled to pension in amount smaller than the nursery benefit should also have the possibility to choose between these two mutually exclusive benefits provided by the social security system.</p>
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