

Annual Rule of Law  
Report - Council of  
Europe input

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

2021

**Directorate General Human Rights and Rule of Law (DG I)**

Poland

# I Justice System

## A. Independence

### CEPEJ

CEPEJ – Country profile Poland - Scoreboard (2019 data) (*content of the link will be available after acceptance of the CEPEJ Study for the Scoreboard by DG-Just*)

[CEPEJ Country Profiles Poland Scoreboard](#)

CEPEJ European Judicial Systems Evaluation Report – Evaluation cycle 2018-2020 (2018 data) – Part 2 Country profile Poland

[CEPEJ Evaluation Report - Country Profiles – Poland](#)

CEPEJ website – General Country profile Poland (including answers to the Evaluation Scheme)

[General CEPEJ Country profile](#)

European Judicial Systems CEPEJ Evaluation Report – Evaluation cycle 2018-2020 (2018 data) – Part 1 Tables, graphs and analysis

[CEPEJ Evaluation Report 2020 Part 1](#)

CEPEJ Dynamic database of European judicial systems

[CEPEJ-STAT](#)

### 1. Appointment and selection of judges and prosecutors

#### GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

#### PACE

Judges in Poland and in the Republic of Moldova must remain independent

Rapporteur: Mr Andrea ORLANDO, Italy, Socialists, Democrats and Greens Group

[Doc. 15204 / Resolution 2359 \(2021\)](#)

#### PACE

The progress of the Assembly's monitoring procedure (January-December 2020)

Rapporteur: Mr Michael Aastrup JENSEN, Denmark, ALDE

[Doc. 15211](#) (see in particular Poland (2.2.7))

[Resolution 2357 \(2021\)](#), especially §§ 8.10, 9.10, 10.10 on Poland

### 2. Irremovability of judges, including transfers of judges and dismissal

#### GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

### 3. Promotion of judges and prosecutors

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

### 4. Allocation of cases in courts

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

### 5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

### The European Commission for Democracy through Law – Venice Commission

[CDL-AD\(2020\)017-e](#) Poland - Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws, endorsed by the Venice Commission on 18 June by a written procedure replacing the 123rd Plenary Session

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)017-e)

### The European Commission for Democracy through Law – Venice Commission

CDL-AD(2017)031 English 11/12/2017 - Public

[Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session \(Venice, 8-9 December 2017\)](#)

PACE

[Judges in Poland and in the Republic of Moldova must remain independent](#)

Rapporteur: Mr Andrea ORLANDO, Italy, Socialists, Democrats and Greens Group

[Doc. 15204 / Resolution 2359 \(2021\)](#)

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

GRECO

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

The European Commission for Democracy through Law – Venice Commission

CDL-PI(2020)002 English 16/01/2020 - Public

[Poland- Urgent Joint Opinion on the amendments to the Law on organisation on the Common Courts, the Law on the Supreme Court and other Laws](#)

7. Remuneration/bonuses for judges and prosecutors

8. Independence/autonomy of the prosecution service

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

5<sup>th</sup> round: corruption prevention in respect of central government, including the top executive functions, and law enforcement

4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

The European Commission for Democracy through Law – Venice Commission

CDL-AD(2017)028 English 11/12/2017 - Public

[Poland - Opinion on the Act on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session \(Venice, 8-9 December 2017\).](#)

9. Independence of the Bar (chamber/association of lawyers)

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

11. Other - please specify

PACE

Democracies facing the Covid-19 pandemic

Rapporteur : **Mr Ian LIDDELL-GRAINGER**, United Kingdom, EC/DA

[Doc. 15157](#)

Consultative Council of European Judges (CCJE)

Statement by the President of the CCJE on the role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges (24 June 2020)

<https://rm.coe.int/ccje-2020-2-statement-of-the-ccje-president-3-lessons-and-challenges-c/16809ed060>

Opinion No. 23 (2020) of the CCJE on the role of associations of judges in supporting judicial independence (6 November 2020)

<https://rm.coe.int/opinion-23-en-ccje-2020/1680a03d4b>

Consultative Council of European Prosecutors (CCPE)

Opinion No. 15 (2020) of the CCPE on the role of prosecutors in emergency situations, in particular when facing a pandemic (19 November 2020)

<https://rm.coe.int/opinion-no-15-ccpe-en/1680a05a1b>

GRECO

9 December 2020 – International Anti-Corruption Day - Newsroom (coe.int)

GRECO President: “No quarter to corruption in healthcare, governments must lead by example”

CPT

Report on the CPT’s 2017 periodic visit, [CPT/Inf \(2018\) 39](#), para. 15, 25 and 26

A few allegations of physical ill-treatment (including torture, e.g. asphyxiation using a plastic bag placed over the head; truncheon blows on the soles of the feet).

As on previous visits, the delegation observed that access to a lawyer in police custody was highly exceptional in practice, despite the amendments to Sections 244 and 245 of the CCP (introduced after the 2013 visit) aimed at ensuring such immediate access.

As regards legal aid, there is still no provision in Polish law allowing for the appointment of an ex officio lawyer before the stage of court proceedings. Therefore, persons in police custody who are not in a position to pay for legal services are effectively deprived of the right of access to a lawyer.

The delegation again heard a few allegations according to which, in the rare cases when lawyers had arrived at a police station, their meetings with detained persons had taken place in the presence of a police officer

## B. Quality of justice

CEPEJ

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12. Accessibility of courts (e.g. court fees, legal aid)
13. Resources of the judiciary (human/financial)
14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)
15. Other - please specify

European Commission for the Efficiency of Justice (CEPEJ)

<https://www.coe.int/en/web/cepej/country-profiles/poland>

## C. Efficiency of the justice system

CEPEJ

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GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

## 16. Length of proceedings

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

[Bağ \(Application No. 7870/04\), Majewski \(Application No. 52690/99\), Rutkowski and Others \(Application No. 72287/10\) and Jan Załuska, Marianna Rogalska and 398 other applications \(Application No. 53491/10\) v. Poland \(ENHA\): Excessive length of criminal and civil proceedings respectively and problems in the functioning of the remedy for the excessive length of proceedings](#)

Presentation on Hudoc.exec: <http://hudoc.exec.coe.int/eng?i=004-20594>

Latest information: [DH-DD\(2020\)359](#)

[Latest decisions of the Committee of Ministers](#)

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

[Group Beller \(51837/99\) \(ENHA\): excessive length of proceedings before administrative courts and bodies and ineffectiveness of the domestic remedies against the excessive length of administrative proceedings.](#)

Presentation on Hudoc.exec : [Beller](#)

Latest information : [DH-DD\(2020\)495](#)

[Latest decisions of the Committee of Ministers](#)

17. Enforcement of judgements

18. Other - please specify

European Court of Human Rights - country profile

[https://echr.coe.int/Documents/CP\\_Poland\\_ENG.pdf](https://echr.coe.int/Documents/CP_Poland_ENG.pdf)

Execution of Judgments of the European Court of Human Rights - country factsheets

<https://rm.coe.int/168070975d>

## II Anti-corruption framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates that have occurred since these documents were published.

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

GRECO

Guidelines addressed to GRECO 50 Member States

Corruption Risks and Useful Legal References in the context of COVID-19

Published 21/04/2020

Office of the Commissioner for Human Rights

Corruption undermines human rights and the rule of law [Corruption undermines human rights and the rule of law - Human Rights Comments - Commissioner for Human Rights \(coe.int\)](#) – published on 19 January 2021

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

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4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

B. Prevention

GRECO

Guidelines addressed to GRECO 50 Member States

Corruption Risks and Useful Legal References in the context of COVID-19

Published 21/04/2020

GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

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Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

21. Rules on preventing conflict of interests in the public sector

22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

24. Any other relevant measures to prevent corruption in public and private sector

## C. Repressive measures

### GRECO

<https://www.coe.int/en/web/greco/evaluations/poland>

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4<sup>th</sup> round: corruption prevention in respect of MPs, judges and prosecutors

3<sup>rd</sup> round: incrimination and transparency of Party Funding

Ad hoc evaluation report: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->

25. Criminalisation of corruption and related offences,

26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

## III Media pluralism

### A. Media regulatory authorities and bodies

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation Rec \(2000\) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector](#)



29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

## B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Office of the Commissioner for Human Rights

[Time to take action against SLAPPs - Human Rights Comments - Commissioner for Human Rights \(coe.int\)](#) – published on 27 October 2020

32. Rules governing transparency of media ownership

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2018\)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership](#)

PACE

The impact of the Covid-19 pandemic on human rights and the rule of law

(Rapporteur : [Mr Vladimir VARDANYAN](#), Armenia, EPP/CD)

[Doc. 15139](#) / See also the [Opinion](#) by the Committee on Culture, Science, Education and Media on the aforementioned report.

## C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2016\)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors](#)

35. Access to information and public documents

Office of the Commissioner for Human Rights

[Access to official documents is crucial – let's make it a reality - Human Rights Comments - Commissioner for Human Rights \(coe.int\)](#) – published on 1 December 2020

36. Other - please specify

Office of the Commissioner for Human Rights

[Tapping the full potential of Equality Bodies for a fairer Europe - Human Rights Comments - Commissioner for Human Rights \(coe.int\)](#) – published on 26 June 2020

Platform to promote the protection of journalism and safety of journalists

<https://www.coe.int/en/web/media-freedom/poland>

Freedom of expression chapters of the annual reports of the Secretary General of the Council of Europe featuring indicators on media pluralism and transparency of ownership, media independence and safety of journalists as well as country-specific assessments:

2018

<https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/168086c0c5>

2017

<https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html>

2016

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680646af8](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680646af8)

2015

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168058e01e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168058e01e)

## IV Other institutional issues related to checks and balances

### A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

38. Regime for constitutional review of laws

The European Commission for Democracy through Law – Venice Commission

CDL-AD(2016)026 English 14/10/2016 - Public

[Poland - Opinion on the Act on the Constitutional Tribunal, adopted by the Venice Commission at its 108th Plenary Session, \(Venice, 14-15 October 2016\)](#)

CDL-AD(2016)001 English 11/03/2016 - Public

[Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session \(Venice, 11-12 March 2016\)](#)

### B. Independent authorities

39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

Office of the Commissioner for Human Rights

Letter from the Council of Europe Commissioner for Human Rights to Zbigniew Rau, Minister of Foreign Affairs of Poland, regarding independence and effectiveness of the Ombudsman institution (dated 13 October 2020 and published on 22 October 2020).

<https://rm.coe.int/letter-to-mr-zbigniew-rau-minister-of-foreign-affairs-of-poland-concer/16809ff1a3>

### C. Accessibility and judicial review of administrative decisions

40. modalities of publication of administrative decisions and scope of judicial review

The European Commission for Democracy through Law – Venice Commission

CDL-AD(2016)012 English 13/06/2016 - Public

[Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, adopted by the Venice Commission at its 107th Plenary Session \(Venice, 10-11 June 2016\)](#)

41. implementation by the public administration and State institutions of final court decisions  
The European Commission for Democracy through Law – Venice Commission  
CDL-AD(2016)012 English 13/06/2016 - Public  
[Poland - Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, adopted by the Venice Commission at its 107th Plenary Session \(Venice, 10-11 June 2016\)](#)

#### D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

43. Other - please specify

Expert Council on NGO Law report on criminalisation of NGO activity in relation to migration and a compendium of developments 2017-2019 in NGO law, freedom of association

<https://rm.coe.int/expert-council-conf-exp-2020-1-ngos-developments-in-standards-mechanis/16809ccd3a>

<https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

Private Office procedure on human rights defenders interacting with the Council of Europe

[https://www.coe.int/en/web/secretary-general/news-2019-thorbjorn-jagland/-/asset\\_publisher/9j1gCsAwfdMt/content/revised-private-office-procedure-on-human-rights-defenders-interacting-with-the-council-of-europe](https://www.coe.int/en/web/secretary-general/news-2019-thorbjorn-jagland/-/asset_publisher/9j1gCsAwfdMt/content/revised-private-office-procedure-on-human-rights-defenders-interacting-with-the-council-of-europe)