



Warsaw, 22 March 2019

Ministry
of Foreign Affairs
Department of the United
Nations and Human Rights

Information of the Republic of Poland on the implementation of the Human Rights Council Resolution 36/21 (2017) on the cooperation with the United Nations, its representatives and mechanisms in the field of human rights

1. What is the legal and policy framework at the national level to ensure the right to participation at the international level, including unhindered access to and communication with international bodies, in particular the UN?

Freedom of association and conducting diverse activities by citizens' organizations are granted by the Constitution and applicable law. The Constitution of the Republic of Poland in the Article 12¹ assures freedom of creation and functioning of various voluntary organizations, including associations, civic movements and foundations. According to the Article 13², political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership shall be prohibited.

In the Polish legal system in force there is no regulation that would forbid and/or hinder the freedom of communication between national entities, including persons or civil society organizations, with international bodies, including the United Nations Organization, in the field of human rights. The State is prohibited from creating such hindrances by Article 49³, Article 52(2)⁴ and Article 54(1)⁵ of the Constitution of the Republic of Poland.

¹ Article 12 of the Constitution of the Republic of Poland: *The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.*

² Article 13 of the Constitution of the Republic of Poland: *Political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited.*

³ Article 49 of the Constitution of the Republic of Poland: *The freedom and privacy of communication shall be guaranteed. Any limitations thereon may only be imposed in cases and in a manner specified by statute.*

⁴ Article 52(2) of the Constitution of the Republic of Poland: *Everyone shall be free to leave the territory of the Republic of Poland.*

⁵ Article 54(1) of the Constitution of the Republic of Poland: *Everyone shall be guaranteed the freedom to express opinions, to acquire and to disseminate information.*

As a result Polish civil society organizations inter alia present reports to UN bodies regarding human rights situation in our State and their members participate in meetings with international organizations' representatives visiting Poland as well as they attend meetings organized abroad.

Polish Government supports civil society organizations by improving NGOs' legal environment and trying to make it as friendly as possible, by i.e. creating dedicated funds and establishing support and development programs. It is worth noting that newly established support programs are aimed among others at reinforcing NGOs financial stability and ability to carry out their missions regardless of funding received for certain projects. Funding might be granted in a form of an ad hoc support that might be used to finance participation in events at supralocal level. Support for NGOs itself and their overall capabilities is conducive to their ability to cooperate with international organizations, including in the field of human rights.

2. What measures have been taken by the Government at the national level to ensure national investigations and accountability on allegations of intimidation and reprisals?

The information available to the National Public Prosecutor's Office shows that in the period between 2017 and 2018 no investigations into the acts or conduct described in the guidelines were conducted by the general organizational units of the prosecution office.

Poland is a party to a number of multilateral treaties in the field of human rights, including the International Covenant on Civil and Political Rights. The Constitution of the Republic of Poland puts an emphasis on the inviolability of human dignity and guarantees a number of freedoms and personal rights (right to liberty, equality before the law and prohibition of discrimination, freedom from torture, inhuman and degrading treatment and punishment and corporal punishment, personal freedom and integrity), but also fundamental rights relating to a fair trial and protection of rights in court proceedings. The rules regarding human rights resulting from international law and the Constitution are fully reflected in the provisions of the Criminal Code (hereinafter: "the CC") and the Code of Criminal Procedure. In particular, the provisions of the Code of Criminal Procedure ensure that the victim has access to effective remedies, as set forth in international human rights standards. The Code of Criminal Procedure does not provide for separate proceedings in the event of an offence being committed against a person on the grounds of membership in or cooperation with a specific organization, including an international organization. The proceedings are conducted on general terms. The analysis of the provisions contained in the Criminal Code gives grounds for concluding that the Polish legal system sufficiently penalizes all acts of intimidation or reprisals against those cooperating with the United Nations.

It should be noted that Article 118a of the CC penalizes the act of taking part in a widespread attack directed against a civilian population pursuant to or in furtherance of a State or organizational policy. On the other hand, Article 119 of the Criminal Code provides for criminal liability for discrimination, i.e. the use of force or an unlawful threat against a group of persons or an individual because of their national, ethnic or racial, political or religious affiliation or lack of religious affiliation. The category of offences in question also includes an active assault on or insult of a foreign state representative or a person enjoying similar protection under a statute, treaty or a generally recognized international custom (Article 136 of the Criminal Code), offences against life and health, offences against freedom, offences against dignity and bodily integrity. The regulations regarding the

penalization of the so-called hate crimes are contained, among others, in Article 119(1) of the CC, Article 256 of the CC and Article 257 of the CC and are a manifestation of enhanced criminal law protection against acts of discrimination committed in the circumstances described in them.

In addition, Polish criminal law ensures that persons held in custody can both have a direct contact and exchange correspondence with international bodies. The right to correspondence is regulated in the Criminal Enforcement Code (hereinafter: "the CEC"). The correspondence may not be censored, inspected or seized and must be forwarded to the addressee without delay. Article 103 of the CEC provides: "Sentenced persons shall have the right to lodge complaints with bodies established under international treaties ratified by the Republic of Poland regarding the protection of human rights".

Furthermore, Polish legislation allows citizens to lodge a complaint against public administration. This also applies to complaints about inappropriate behavior of police officers and other services. This matter has been regulated by the provisions of the Chapter VIII of the Code of Administrative Procedure. The Department of Control and Supervision within the Polish Ministry of Interior and Administration is the competent body for examining such complaints. At the same time, it should be noted that since January 2010 there has been a mechanism in force, both within the Police services and the Polish Border Guard, allowing for submitting complaints and non-prosecution information to the Polish Ombudsman, as an independent institution investigating improper behavior of the Police and the Border Guard.

The Ministry of the Interior and Administration is also responsible for the coordination of educational activities conducted in the Police, and aimed at increasing the competence of officers in the effective fight against hate crimes. The aim of the program is to improve the competences of Police officers in the conduct of their activities in case of hate crimes, and to develop their abilities to handle victims of this type of crime and sensitize officers to the issue of discrimination - also the one whose perpetrators can be other police officers.

3. How has your Government contributed to initiatives at the international or regional levels to encourage the prevention of acts of intimidation and reprisals?

The treatment of prisoners and persons held in remand centers is the subject of training conducted both in individual organizational units, and particularly in training centers of the Prison Service, as part of initial, vocational and specialized training. The content addressing the principles of humanity, rule of law, tolerance, as well as the issues relating to international standards for dealing with persons held in custody constitutes a vital part of the segment titled "*International standards of execution of imprisonment*". Particular emphasis is placed on providing officers and employees with knowledge about the most important rules regarding the treatment of persons held in custody contained in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Code of Ethics for Prison Officers and Staff, European Prison Rules and UN Standard Minimum Rules. Officers are knowledgeable about the regulations relating to international protection of human rights; they are also acquainted with the case-law of the European Court of Human Rights.

It should also be pointed out that the verification of compliance with the standards set by the Polish special statutes falls within the jurisdiction of the courts and the Constitutional Tribunal since

the Constitution of Poland guarantees everyone the right to a fair and public hearing without undue delay by a competent, independent, impartial and autonomous court.

4. How has the Government provided assistance to members of civil society for their cooperation with the UN? Have any measures been taken to improve the security and safety of those who cooperate with regional and international organizations?

The Ministry of Justice carries out tasks relating to the administration of the Justice Fund, which is a state earmarked fund aimed at helping victims and witnesses, counteracting crime and providing post-penitentiary assistance, and takes measures to provide assistance to victims of prohibited acts willing to resort to legal remedies that are available to them. Furthermore, projects for combating the root-causes of crime are implemented with the use of the resources of the Justice Fund. As part of the Justice Fund, funds have been allocated for the implementation of programmes addressed to the general public. The analysis of reports shows that that persons harmed by prohibited acts such as unlawful threats and harassment report to centers for victims, financed by the Justice Fund, where they are offered legal and psychological assistance.