

The Second Congress on Human Rights was held in Warsaw on 14-15 December 2018. It included 43 sessions, and was attended by 200 panellists and about 1500 participants from across the country, who discussed important issues regarding the protection of human rights and civil liberties in Poland. The Congress has been a result of the efforts of the participants of the CHR's regional meetings held across the country. Their engagement and participation in the congress made it possible to develop its recommendations. *The objective of the regional visits is to understand the problems of citizens from a perspective other than that of big cities,* Adam Bodnar told journalists in Poznań.

The programme of the Congress focused on four thematic areas: the crisis of the rule of law in Poland; equality - a lesson in history; taking the law seriously; effectiveness of the system of justice.

The first edition of the congress, held in 2017, was devoted to diagnosing numerous important social and legal phenomena. The second edition sought to develop a programme for the future, to look for solutions and identify activities that seem necessary for the protection of civil rights.

One of the main conclusions of the congress discussions **is the need to increase the constitutional awareness of citizens**, also among judges, scientists, media representatives and opinion-building communities. This is related to the current system's crisis and constitutional order instability in the country, and the growing confusion and uncertainty of the roles and competences of several state authorities. The stoppage and reversal of this tendency depends mainly on the activity of the civil society. On whether the citizens will notice the threats on daily basis, identify themselves with constitutional values, and defend their constitutionally guaranteed rights and freedoms in their relations with the authorities.

Legal awareness at the European level is also of great importance, particularly now when we are witnessing intensified disputes about the operation of the European Union and the quality of our country's participation in it. **We must keep convincing the citizens that European law and European institutions such as the EU Court of Justice or the European Court of Human Rights serve Poles well.** All citizens may use them to seek justice and defence of their interests.

The participants of the congress also pointed to **the necessity to introduce changes to history and civic education so as to enable dialogue and a variety of points of view, and to make this education carried out more extensively and with a greater sense of responsibility.** The education process may not be conducted in a way adjusted to temporary needs or immediate political goals. After 100 years of regaining the country's independence, Poles deserve a serious and in-depth debate on the actual sources of strength of the state and the society, and the role of social solidarity and the sense of community in promoting independence in a way that does not exclude or omit anyone. It is worth remembering that our ancestors lost their independence also due to their internal disagreements, but we have an opportunity to act in a smarter way, to draw the right conclusions and to convince the young generation that those conclusions are correct.

Another challenge relates to broadly understood social communication. We need to make it more targeted and useful for citizens. Every individual, community or professional group should have full knowledge about their rights and real possibilities of protecting them. We need better self-organization, improved communication with each other, closer cooperation and the ability to jointly act when needed. For example, we should not accept the attempts to limit public space for civil society and non-governmental organizations or the

unjustified cases of refusal of access to public information. The relations between the individual and the state should be relatively balanced and there should be two-way communication between them. This also applies to local governments and all public institutions. A lot depends on everyday courage and consistent attitudes of the citizens.

Finally, an important element visible during the congress was **the postulate to make at least a part of our social life de-politicized**. There is a broad scope of matters of citizens, in particular the poorest and the weakest ones, that requires cooperation conducted despite the existing differences, with elementary sensitivity and practical approach rather than competition between political parties. There should be no space for political disputes or ideological prejudices where we want to assist people with disabilities, develop solutions to help homeless people or support victims of crimes. In this area of our life, there should be only two sides: those who need assistance, and those who can and want to provide it.

Specific recommendations

Area A: Crisis of the rule of law in Poland

1. Attention should be paid to ensuring **a diversity social organizations** by building a non-discriminatory system public funds allocation to them for the implementation of their statutory objectives. Distribution of the support funding should be based on a fair, transparent, open and competitive selection process. The development of NGOs leads to expanding the space for the civil society.
2. It is also recommended to **react to all attempts of stigmatizing civil society organizations** that defend democracy and human rights. In this respect, it is necessary to require state authorities to fulfil their obligations arising from the international law as well as the recommendations of the European Union Agency for Fundamental Rights (FRA). In its latest report, the Agency recommends collecting and publishing data on hate crimes against organizations working in the field of human rights.
3. It is recommended to become involved in the law-making processes and to demand respecting **our rights to open and effective social consultations**. More and more often we come across situations when such consultations are avoided, an example of which is the excessive use of the possibility of proposing parliamentary bills instead of governmental ones (because of the fact that parliamentary bills do not require consultations). We may also propose the society's bills.
4. **We should develop cooperation with international bodies** by forwarding information required for objective evaluation of the situation in the area of the rule of law in Poland. From this point of view, the most important decision of the Court of Justice take in 2018 was the order of the Vice-President of the Court of Justice of 19 October 2018 in Case C-619/18R (Commission complaint against Poland regarding the Act on the Supreme Court). The effect of the order (confirmed subsequently by the order of 17 December 2018) was the seventh amendment to the Act on the Supreme Court Act, adopted on 21 November 2018. This only proves that the course of action is correct and should be continued.
5. We should definitely disagree with the statements that **judicial proceedings conducted before the EU Court of Justice (both on the initiative of the European Commission and as a result of questions referred to for preliminary ruling and concerning the interpretation of TEU provisions in the context of the rule of law in Poland)** may be viewed as interference with Poland's internal affairs. It is worth reminding that such proceedings have a basis in international obligations undertaken by Poland and in the Constitution of the Republic of Poland.

6. We should **defend judges who decide to refer questions to the Court of Justice for preliminary ruling**. They have a right and sometimes even a requirement to do so, directly under the EU law. Judges may not be restricted in the area of asking the CJ for the interpretation or assessment of any EU law. Only the CJ may assess whether the questions are correctly formulated and relate to the scope of jurisdiction of the court. Questions directed by judges should not be assessed as action in excess of their competences and should not be considered grounds for disciplinary proceedings.

Area B: Equality – a lesson in history

7. If we want to strengthen our independence we should conduct our **social and interpersonal relations according to the principle of joint responsibility rather than competition, and permissibility of different perspectives and points of view**. We have a new generation of people brought up in free Poland, but there are groups that do not necessarily identify with this model of the state. The key issue is communication which should be multilateral, should use new technological solutions and should not be carried out in the traditional one-way direction from the elites to the society.
8. We should **take steps to ensure real equality of rights of minorities and their subjective treatment**. The fact that one is a part of a national or other minority should not be perceived as a threat. People who experience "hate speech" should find the support of the state. The history of Poland that had minorities for centuries is full of good examples and models. Any xenophobic statement or behaviour in public space should be stigmatized.
9. We should work towards **changing the nature, composition and rules of work of the Joint Committee of the Government and National and Ethnic Minorities** or the establishment of a new institution that would make it possible for representatives of minorities to have real influence on the state policy in this area.
10. We should also take steps to underline **the importance of national and ethnic minorities in the history of Poland**, in the general education curricula and in educational programmes of schools and educational institutions. There should be lessons about modern patriotism and intercultural cooperation, **referring directly to the idea and heritage of the Polish Commonwealth of Nations**.
11. We should request **local authorities to be more involved in promoting the prohibition of discrimination**, including the prohibition of discrimination against LGBT people e.g. by adopting local programmes for their equal treatment.
12. We should **take steps to ensure that Article 13 of the Constitution is consistently taken into account in activities of prosecutor's offices as well as in judicial decisions**, and is not just a written provision on potential sanctions. The article prohibits the existence of political parties and other organizations that relate to totalitarian methods and practices of Nazism, fascism and communism, and that consent to hatred and use of violence.
13. We should **support non-governmental organizations in their activities against hate crime, violence and unequal treatment**. All such initiatives are valuable, particularly the bottom up ones, if they help people who are weaker, discriminated against, victims of crime or at particular risk of violence.
14. We must **create a simple and victim-friendly system of reporting hate crimes**, e.g. through the implementation of the directive on victims (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA).

15. We should **ensure the safety of victims of domestic violence by immediate isolation of the perpetrator from the victim**, regardless of the initiation of proceedings against the perpetrator and the stage of those proceedings.
16. It seems necessary to **supplement the legislation that prohibits sexual harassment** in various areas of social life, in particular in the area of higher education.
17. We should **initiate training programmes for employees of the police, prosecutor offices, for judges and doctors** about domestic violence and sexual violence because the fight against those crimes requires specific knowledge and sensitivity. We should learn how to accept information on such crimes and how to talk to victims so as to avoid secondary victimization. Particular attention should be paid to the situation of migrant women, women with disabilities, seniors or persons living in rural areas.
18. Steps should be taken to **change the definition of rape as crime**, so that every sexual act performed without a person's consent is subject to penalty.
19. We should talk about **life problems that LGBT people face as a result of their rights not being provided for in the existing legislation**. A good opportunity for this may be compulsory school activities on human rights (e.g. introduction to social science, or education for family life).
20. It is also necessary to **develop activities in the field of strategic litigation relating to the protection of the rights of LGBT persons**, conducted by their professional representatives and non-governmental organizations, in order to disseminate international standards in the judicial practice.
21. It is also necessary to **introduce legislation regarding universal design** and to expand the scope of application of the so-called reasonable adjustments.

Area C: Taking the law seriously

22. The right to sex education is the right to information. Such education is a part of health education, and relates to the right to health protection. Unfortunately, **young people are left to themselves; teachers do not want to discuss the subject, and have no tools and possibilities for it**. Therefore, we should require the state to meet its obligations, including **compulsory sex education taking into account contemporary knowledge and results of scientific research**. It is also advisable to involve local governments more strongly, in particular in the co-financing and organizing additional programmes.
23. We should seek **strengthened supervision of the Ministry of National Education and school inspectors over the organization of classes in "Education for family life"** so that it is also consistent with contemporary knowledge and neutral in terms of worldview.
24. We need better education and information for the society about possibilities and risks related to the development of new technologies, in particular in the area of self-learning systems and their effects. We must "follow the algorithms" in order to protect ourselves against the loss of control over our data and the possibility of its misuse.
25. We should take more effective **measures demanding the state to be responsible for environmental protection**. Only the state has the tools (or the possibility of their establishment) to achieve this goal. The Constitution of the Republic of Poland (Article 68) guarantees the right to health protection to citizens. This right can be enforced in particular when the state authorities fulfil their duty to care for the environment (Article 74 of the Constitution). Environmental sustainability can therefore be considered as a condition necessary for citizens' health. Effective environmental protection means not only the prevention of environmental pollution but also the protection of biodiversity and climate stability.

26. We should also more often refer to the **rights provided for under the Aarhus Convention** which guarantees the right to information and the participation in decision-making processes, as well as access the access to justice in cases related to the environment. It is possible to take cases to court to make the authorities fulfill their responsibilities in this area.
27. It is also possible to apply Article 364 of the Environmental Protection Law (relating to operations discontinuance due to risk posed to human health). The article may be applied e.g. to the problem of odour nuisance, or to cases of risk to mental health. According to the holistic approach, human health means both physical and mental health and the basis of the latter is mental well-being. This interpretation of the provision may make it possible for the Environmental Protection authorities **to limit operations that are formally legal but arduous to people, claiming that they pose a risk to human life or health.**
28. Moreover, steps should be taken to introduce **people's right to living in a clean environment.** This would give more possibilities, for example with regard to air pollution, to claim one's right to living in unpolluted environment as individual's right, and to seek protection by starting court proceedings concerning infringement of individual's rights.
29. We should take action to convince as many local governments as possible to **apply the Charter of Rights of persons who experience homelessness**, which lays a basis for systemic and comprehensive solutions of the problem.
30. Steps should be taken to **limit the increasing transport exclusion of residents of smaller towns and villages** who have problems with transport connections to work places, health centres or cultural and educational facilities. To this end, transport to schools for all those who need it, or bus transport services available on the phone can be introduced. Greater engagement of local governments at the level of municipality and voivodeship is required.

Area D: Effectiveness of the system of justice

31. The work of courts needs to be improved. Only a court that is independent, competent, accountable and effective can guarantee fair judgments. Discussion is required about the model of appointment of judges and the structure and organization of the system of justice in Poland. The key **constitutional values of those institutions must be maintained: courts must be independent and judges must be impartial.**
32. The **continuation of activities in the field of digitization of the system of justice should be supported.** As a result, a large part of proceedings-related documentation will be available in the electronic form and consistent with WCAG 2.0 standards, taking into account the specific needs of people with disabilities.
33. Measures must be taken to ensure that all persons working within the justice system, regardless of their position and function, **are trained in the field of specific needs of people with disabilities and in anti-discrimination treatment.** This knowledge should also be included in university courses in law, including apprenticeships and the courses offered by the National School of the Judiciary and Public Prosecutors.
34. Steps are required to abolish the **system of incapacitation in its current form, as inconsistent** with the provisions of the Convention on the Rights of Persons with Disabilities. Instead, various forms of assistance based on the model of supported decision-making should be introduced.
35. A national-level plan towards a deinstitutionalized system of care for people with disabilities is needed. **We should call upon the authorities and MPs to take**

initiatives in this regard and to implement the National Deinstitutionalization Programme.

36. We should seek a change of the current **system of person's surveillance carried out by special services pursuant to a court's decision**. After the proceedings regarding the case are ended, the person whose conversations had been recorded should be informed about it. This would make it possible to verify whether the use of the surveillance systems is justified. Courts should be provided with financial and personnel support in this regard. It is also worth considering the introduction of a system used in Germany or the UK. Britain where the use of surveillance is assessed by independent bodies.
37. One of the problems of the Polish justice sector is the inefficient system of court experts. Yet, their role in court proceedings is extremely important as their opinions often directly impact the judgment. Therefore, **it is necessary to verify the procedures of court expert selection and to develop a central register of court experts**.
38. Changes are needed regarding the **official language use in courts and the improved communication of statements that contain judgment reasoning**. A citizen who does not know the language of the judgment cannot trust the justice system. The use of new technologies is recommended here. Open access to the system of algorithms used to assign cases to judges would also increase trust to the system. Furthermore, citizens should be convinced that judges themselves seek more openness and the necessary changes.
39. Attention should be paid to **modern forms of citizens' legal education**. A very effective tool is mock trials that teach about the basic elements of court proceedings, the complexity of approach to various situations, the need to avoid simplified judgments and to maintain respect for other people. In this context, disciplinary proceedings initiated against judges in connection with their participation in such mock trials that make the work of courts closer to citizens should be a source of concern.
40. For the reform of the system of justice to be effective, adequate **methods should be used to measure the effectiveness of courts' work**. In this area, both quantitative and qualitative factors should be taken into account, and steps should be taken to this end. It is also of great importance for the system to be clear for citizens.