



HELSINKI FOUNDATION
FOR HUMAN RIGHTS

Rule of law, human rights and democracy

Civil society assessment of the legal and policy framework
of Poland in the view of OSCE commitments

POLAND

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Introduction

Poland has remained a member state of the Organisation for Security and Cooperation in Europe (OSCE) since its inception in 1975, having been one of the signatories of the Helsinki Agreement, which created OSCE's predecessor, CSCE. The obligations arising out of this membership are essential for the system of human rights protection in Poland and, as such, their implementation is vigilantly monitored by domestic civil society organisations.

Over the past 46 years, the socio-political and economic situation in Poland has changed dramatically, with two clearly visible pivotal moments. First, as a result of partially free elections of 1989, the country has transitioned from a communist state into a democracy, serving as an example of a successful and peaceful transformation for the entire CEE region. Second, with the shift of power in late 2015, the process of strengthening liberal democratic values and the rule of law has been inhibited, whereas Poland started to drift towards non-liberal democracies, or even autocracies, in terms of the rule of law acceptance, the respect for human rights and fostering democratic processes.

Accordingly, the report, which we are honoured to present, focuses on the three areas mentioned above: the rule of law, human rights and democratic processes. Given the upcoming Polish presidency in the OSCE, as well as taking into consideration the fact that the most significant regress can be observed in these fields since the elections in October 2015, the report concentrates on the developments that occurred in the last 6 years. It consists of three main thematic parts.

As regards the first part, pertaining to the rule of law, it is fundamental to observe that in the last 6 years twenty pieces of legislation were adopted that interfered into the judiciary. The adopted changes have virtually dismantled the guarantees for judicial independence, resulting in a situation where such independence relies only on individual judges' moral integrity. There has been also a significant rise in the number of reprisals directed at judges and prosecutors. As a result of the legal and policy changes, Poland remains in constant conflict with the European Union and indicates no political will to implement judgements of the Court of Justice of the European Union related to the judiciary.

The second part of the report describes the human rights situation in Poland in the last years. In particular, this part tackles the matter of limiting the rights of minorities and stigmatising them (on the example of the LGBTI community), as well as addresses the problem of reproductive rights and gender-based violence. Moreover, as the number of attacks on journalists in Poland grows and the society is polarised as never before, this part also indicates threats to the freedom of information.

Lastly, the third part concerns democratic processes. In the last 6 years, a profound decline in standards of legislative process could be observed, which has a direct bearing on the quality of law adopted by the Parliament. Another democratic process affected negatively within this period was the electoral procedure, with the most notable example of cancelled presidential elections of 2020. In addition, the process of shrinking of the civic space has been also present in Poland since 2015. All of these issues taken together beg the question if Poland remains to meet the

criteria of a strong democracy, and consequently – whether it guarantees the implementation of commitments of an OSCE member.

The situation in Poland in the last years was subject to numerous studies and reports prepared by the academia, journalists, international bodies and national non-governmental organisations. For the readers' convenience, a non-exhaustive list of such papers has been placed at the end of this report.

The authors of the report are pleased to present it a month prior to Poland's taking on the responsibility of the presidency in the OSCE. We do so in the hope of contributing to a critical reflection concerning the situation in Poland as of the end of November 2021. We firmly believe that it will help to initiate changes aimed at repairing the consequences of the ongoing crisis.

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1. Rule of law

OSCE commitments

Copenhagen 1990

(2) [The participating States] are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law part II does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law (...)
(...)

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(...)

(5.12) - the independence of judges and the impartial operation of the public judicial service will be ensured.

Since 2015, the governing majority has adopted over 20 different pieces of legislation concerning the organisation and functioning of the judicial system in Poland – from top rank courts, such as the Constitutional Tribunal or the Supreme Court, to common courts.

None of these changes, however, has addressed any of the systemic problems of the justice system, such as e.g. the excessive length of proceedings or the need for improving access to justice for marginalised groups. In fact, almost all of the changes aimed at widening political control over the judiciary.

1.1. Constitutional Tribunal

In Poland, the Constitutional Tribunal plays an important role in a democratic system. On the one hand, it adjudicates on the abstract compliance of laws with the Constitution, and on the other hand, it examines individual constitutional complaints (anyone whose right has been violated has the right to lodge a complaint with the Constitutional Tribunal regarding the compliance of the provision on the basis of which the decision was issued with freedoms and rights set forth in the Constitution). In accordance with the Constitution, the decisions of the Tribunal are binding and final.

The dispute over the shape and functioning of the Constitutional Tribunal initiated the most profound democratic crisis in Poland after 1989.

Election of the new judges of the Constitutional Tribunal and its President

The Constitutional Tribunal is composed of 15 judges appointed by Sejm (the lower chamber of the bicameral Polish Parliament). In 2015, the terms of office of five judges expired – in October 2015 with regard to the first three of them, and in November 2015 as concerns the remaining two. The parliamentary elections were held on 25 October 2015.

During the last session of the Parliament before the elections in October 2015, the then governing majority appointed five Constitutional Tribunal judges in a row. Their appointment was based on a legal provision amended right before the judges were elected, which subsequently has been declared partially unconstitutional by the Constitutional Tribunal.

In November 2015, the new governing majority, composed of the Law and Justice party and its coalition partners, disregarded completely the election of judges made by the previous Parliament and appointed five new judges, appointing three of them without a valid legal basis.

Changes in the composition of the Constitutional Tribunal were accompanied by amendments of provisions concerning the functioning and works of the Tribunal. Between November 2015 and October 2016, the governing majority adopted altogether six different pieces of legislation. The first three of them aimed at paralysing the works of the Tribunal, whereas the remaining three new acts, adopted in October 2016, changed the procedure for appointing the new President of the Constitutional Tribunal.

In December 2016, when the term of office of Andrzej Rzepliński, the Constitutional Tribunal's President, expired, the President of Poland appointed Julia Przyłębska (one of the five new judges appointed by Law and Justice) as the new Tribunal's President. The appointment of Julia Przyłębska was done absent a valid decision of judges of the Constitutional Tribunal's General Assembly and in violation of the provisions regulating the procedure.¹

Functioning of the Constitutional Tribunal since 2017

With the appointment of Julia Przyłębska for the position of the Constitutional Tribunal's President, the Tribunal has become almost completely dependent from the political will. Since 2017, the jurisprudence of the Constitutional Tribunal has begun to be used to rubber-stamp changes made to the constitutional system by the ruling majority. The Constitutional Tribunal has approved the most controversial changes to the laws relating to the judiciary or those that addressed the ruling party's vested interests, e.g. the pardon of one of the members of the ruling majority, changes to the law on assemblies or the ban on abortion.

Moreover, in 2021, a new trend emerged with the Constitutional Tribunal being used to settle the dispute between the Polish government and the European Commission over the changes in

¹ Helsinki Foundation for Human Rights, [Chief Justice of Poland's Constitutional Court elected at illegal session?](#)

the judicial system, as well as to limit the scope of jurisdiction of the European Court of Human Rights with regard to assessing the independence of the judiciary.²

Since 2017, there has been a steady decline in the number of cases received by the constitutional court across all categories, with the exception of constitutional complaints (brought by individuals). Since 2017, the number of requests for the constitutional review of legislation submitted by the government and parliamentarians of the ruling majority has increased and amounted to 20 in total. By comparison, between 2010 and 2016, members of the Parliament brought 79 cases before the Constitutional Court, about 94% of which were initiated by requests from politicians of the then opposition (three requests came from representatives of the Polish People's Party, which was part of the then coalition, and one from politicians of the ruling Civic Platform).³ This practice is controversial insofar as the ruling majority has the freedom to develop and change the legal system and, where certain legislative arrangements are deemed to fall short of a standard described in the Constitution, it is sufficient for the majority to amend the law, rather than to initiate the procedure for constitutional review. The abovementioned argument is particularly relevant given that, at least in theory, the ruling majority should not be certain as to the outcome of the case brought before the Constitutional Court.

Since 2017, public opinion polls have been consistently indicating a negative assessment of the constitutional court's activities. At the end of 2020, after the ruling on access to abortion had been issued, 59% of the respondents had a negative view of the Constitutional Tribunal's work.⁴ The perception of the constitutional court's work may be significantly influenced by its controversial rulings, as well as by some judges' close ties with politicians of the ruling majority.

The activities of the Constitutional Tribunal demonstrate that it has ceased to be an independent institution upholding the Constitution and a cornerstone of the human rights protection system. Proceedings before the Constitutional Tribunal in its current form are fraught with the risk of infringements of the individuals' right to have their case heard by an independent body established by law.

CONSTITUTIONAL TRIBUNAL'S JUDGEMENTS IN KEY HUMAN RIGHTS AND RULE OF LAW CASES – SELECTED EXAMPLES

Abortion case⁵

In October 2020, the Constitutional Tribunal ruled on the provisions allowing for legal abortion. Until 2020, abortion in Poland was allowed only in three strictly regulated cases: where the pregnancy was a result of a crime, or the pregnancy posed a threat to mother's health or life, or – in the third case – when the medical examination's results indicated a high risk of severe and

2 [Judgement of the Constitutional Tribunal](#) of 24 November 2021, case no. K 6/21.

3 Helsinki Foundation for Human Rights, [A tool of the government. The functioning of the Polish Constitutional Court in 2016-2021](#).

4 Public Opinion Research Centre (Centrum Badań Opinii Społecznej, CBOS), [Evaluation of public institutions' activities \(Oceny działalności instytucji publicznych\)](#), issue 38/2021, March 2021.

5 Constitutional Tribunal, [Judgement of 22 October 2020, case no K 1/20](#)

irreversible defects of a foetus. In 2020, in Poland 1.076 abortions were carried out. In over 90% of the cases the abortion was performed due to the high risk of severe foetal malformation.⁶

Since 2015, the Parliament undertook two initiatives to change the legal provisions regulating access to abortion, yet in each case, in the face of massive social protests, the works on legal amendments were discontinued.

In 2019, a group of MPs of the governing majority directed a motion to the Constitutional Tribunal to verify the constitutionality of the provisions insofar as they allowed to terminate the pregnancy due to foetal abnormality. The Constitutional Tribunal ruled that this provision was not in compliance with the Constitution. As a result of this decision, the access to legal abortion in Poland became almost impossible in practice.

The Constitutional Tribunal's ruling ignited massive protests across the country, which are estimated to be the biggest ones occurring in Poland since 1989 (reaching their climax in the end of October 2020 with 410 demonstrations across the country).

Supremacy of the Polish Constitution over the EU law

In 2021, two requests have been made to the constitutional court to review the compatibility of specific provisions of the Treaty on European Union with the Polish Constitution.

The first one, submitted to the constitutional court by the Prime Minister in March 2021, sought to review the constitutionality of Articles 4(3) and 19 TEU insofar as they authorise or oblige a body applying the law to derogate from the provisions of the Constitution of the Republic of Poland or instruct such a body to apply legal provisions in a manner inconsistent with the Constitution and empower a court to review the independence of judges appointed by the President of the Republic of Poland and review a resolution of the National Council of the Judiciary on requesting the President of the Republic of Poland to appoint a judge.⁷

Meanwhile, in June 2021, a group of parliamentarians submitted a request for a review of the constitutionality of Article 279 of the Treaty on the Functioning of the European Union interpreted in a manner that allows the Court of Justice of the European Union to issue interim measures ordering Member States to determine, inter alia, the composition of court panels and appointment of judges.⁸

Both requests aimed at undermining the principle of supremacy of EU law and to limit the national application of CJEU judgments relating to the so-called reforms of the judiciary.

6 W. Ferfecki, [Raport Ministerstwa Zdrowia: 1076 aborcji w Polsce w 2020 r. W tym legalne byłyby 23](#), Rp.pl, 19 July 2021.

7 Constitutional Tribunal, [Judgement of 7 October 2021, case no. K 3/21](#)

8 Constitutional Tribunal, [Judgement of 14 July 2021, case no. P 7/20](#)

1.2. Supreme Court

The Supreme Court is one of the top rank courts in the Polish judicial system. The Supreme Court plays a crucial role in sustaining the independence of the judiciary in Poland.

First, the Supreme Court supervises the works of lower courts in terms of judicial control. For example, the Court can adopt decisions in which it presents the legal interpretation of a certain provision. Second, the Supreme Court confirms the validity of parliamentary and presidential elections. Third, the Supreme Court has a right to issue opinions about draft legislation. Until 2020, the Supreme Court prepared its legal opinions in the key pieces of legislation concerning the functioning of the judiciary.

Legislation changes

In December 2017, the Sejm (the lower chamber of the Parliament) adopted the new Act on the Supreme Court. The new law includes numerous provisions that widen the political supervision over the Supreme Court and poses a direct threat to judicial independence.

First, the law lowered the retirement age of judges. Those judges who attained the age of 65 were obliged to apply to the President of Poland for a permission to remain in office. It was estimated that the law would affect 40% of the incumbent judges, including the then First President of the Supreme Court, Małgorzata Gersdorf (whose 6-year term of office expiring in 2020 was guaranteed by the Constitution).

The new act also created two new chambers of the Supreme Court: the Disciplinary Chamber and the Chamber of Extraordinary Control and Public Affairs. All of their judges were appointed by the new National Council of the Judiciary (see further: 1.3 National Council of the Judiciary).

The Disciplinary Chamber is responsible for hearing disciplinary cases concerning judges of the Supreme Court and appeals against the decisions issued in disciplinary proceedings against judges of common courts and representatives of other legal professions. The Disciplinary Chamber has a privileged position within the Court as, contrary to the other chambers, its work is not supervised by the First President of the Supreme Court. Moreover, in comparison to the remaining chambers, it also has considerable financial autonomy.

In addition, the act introduced a new legal mechanism – the extraordinary appeal – that, in its original form, allowed to question almost all final decisions issued by courts since 1997.

Consequences of legal changes

The introduction of the new Act on the Supreme Court caused significant legal and policy changes that resulted in several proceedings pending before the Court of Justice of the European Union and the European Court of Human Rights.

In 2018, the European Commission launched the infringement proceedings against Poland concerning the retirement age of the Supreme Court's judges.⁹ In judgement of November 2019, the Court of Justice of the European Union found that the provisions violated the EU law. In a meantime, however, pursuant to an earlier decision of the CJEU on interim measures, all of the dismissed judges returned to work.¹⁰

Second, the subsequent amendments to the Act on the Supreme Court (since 2018 the governing majority has adopted altogether 11 amendments to the Act) changed the procedure of appointing the next President of the Supreme Court. In May 2020, as a result of the procedure that favoured the new judges (appointed by the National Council of Judiciary since 2018), the General Assembly appointed five candidates. From among the candidates, the President of Poland selected Małgorzata Manowska, one of the new Supreme Court judges.

Third, the key legal concerns resulting from the new Act on the Supreme Court are related to the status of the Disciplinary Chamber. In a precedential decision of 19 November 2019 the Court of Justice of the European Union laid down the criteria to assess the independence of the Disciplinary Chamber.¹¹ The criteria included, among others, the privileged position of the Disciplinary Chamber in the structure of the Supreme Court and the way in which judges of the Disciplinary Chamber were appointed. The Supreme Court, while implementing the decision of the CJEU, deemed that the Disciplinary Chamber was not a court in the light of the EU law and constitutional standards.¹²

1.3. National Council of the Judiciary (the NCJ)

The National Council of the Judiciary is an administrative body composed of, in particular, representatives of the judiciary (15 judges-members), as well as representatives of the Parliament and the President of Poland.

In 2017, the amended Act on the National Council of the Judiciary changed the process of appointing judges-members of the Council. Until then, they were appointed by their peers (other judges). Under the new law, the judges-members of the NCJ are appointed by the Sejm from among candidates who have presented the list of at least 25 judges endorsing their candidacy. Since January 2018, when the elections begun, these lists have remained confidential and the Speaker of the Sejm refused to publish them, despite raising legal concerns regarding the preparation of the lists, multiple requests for public information made by NGOs and members of the opposition and binding the decision of the administrative court. Only two years later, in February 2020, the Speaker of the Sejm finally published the lists.

The publication of the lists confirmed the concerns regarding their legality to be true, as in one case the candidate, Maciej Nawacki, has not presented a required number of endorsements (four

9 European Commission, [Rule of Law: Commission launches infringement procedure to protect the independence of the Polish Supreme Court](#)

10 Court of Justice of European Union, [Case C-619/18](#)

11 Court of Justice of European Union, [Case C-585/18](#)

12 Supreme Court, [Judgement of 5 December 2019, III PO 7/18](#)

out of twenty eight judges from his list withdrew their support before the list was submitted to the Parliament). Despite that, the list was accepted by the Speaker of the Sejm and the Sejm appointed the entire group of 15 judges-members of the Council *en bloc*. The irregularity in submitting the required documents for one candidate influences the entire process of appointing the members of the NCJ and undermines the legal grounds for its further operation and legality of decisions such as nominating and promoting judges. The legal concerns regarding the composition of the NCJ deeply influenced the discussion on the status of judges appointed by it.

1.4. Common courts

The changes in the judiciary system also strongly affected the situation in common courts, as well as the independence of common courts' judges.

Dismissal of courts' presidents

In 2017, the new provisions of the Act on common courts came into force. According to the new provisions, the Minister of Justice gained competences to dismiss the presidents and deputy presidents of all common courts within 6 months from the law's coming into power and without providing any justification.

As a result, the Minister of Justice dismissed over 150 presidents and deputy presidents, only based on his discretionary decision, and replaced them with judges who were appointed at this function without no consultation with general assemblies of judges. The research carried out by the Helsinki Foundation for Human Rights showed that, contrary to the Minister's statements, the process of dismissing certain courts' presidents was not supported by either full or fair analysis of the situation in these courts. Furthermore, the appointment of new presidents and deputy presidents was conducted in a non-transparent way and based on irrelevant criteria. In general, the introduced legal changes and replacement of the courts' management broadened the opportunities for politicians to influence courts.¹³

Common courts judges' retirement age

In 2017, legal changes were introduced which lowered the retirement age of common courts' judges. Under the new regulations, women over the age of 60 and men over the age of 65 could remain in the position of judges, provided that the Minister of Justice has given his consent. Similarly as in the case of the dismissal of presidents of courts, also in this case the decision of the Minister of Justice was not supported by any detailed analysis of the work of a particular judge and was completely discretionary and not subject to judicial review. By April 2018, 219 judges had filed motions to continue holding office after reaching retirement age, of which the Minister had considered 130 and agreed to continue holding positions only in 69 cases.¹⁴

13 Helsinki Foundation for Human Rights, [It starts with the personnel](#)

14 Response of the Ministry of Justice to the request of the Helsinki Foundation for Human Rights for access to public information.

Under pressure from the European Commission, the ruling majority withdrew from these changes, amending the legislation again in April 2018. At that time, the retirement age for judges was equalised to the age of 65 and the provision conferring powers on the Minister of Justice to decide whether a judge may remain in office was removed. The problem of lowering the retirement age of judges was a subject of proceedings before the Court of Justice of the European Union. In a judgement of 5 November 2019, the CJEU found the new provisions on judges retirement age are contrary to EU law.¹⁵

The so-called “Muzzle law”

On 23 January 2020, the Parliament adopted the so-called “Muzzle law” that provided, among others, for a stricter disciplinary liability for judges. The law introduced new types of disciplinary offences, e. g. questioning the status of a judge appointed by the National Council of the Judiciary. This provision was a response to the landmark judgements: of the Court of Justice of the European Union (CJEU) of 19 November 2019, and the Supreme Court’s of 5 December 2019. In its ruling, the CJEU outlined the assessment criteria of the independence of the National Council of the Judiciary (NCJ), a constitutional body responsible for nominating judges and protecting judges’ independence. In its judgment of 5 December 2019, the Supreme Court has confirmed that the NCJ, due to its composition and the way it operates, does not provide sufficient guarantees of independence from executive and the legislative authorities (see further 1.2 Supreme Court).

Relying on these judgments, common courts judges started to question judicial appointments made by the President. In the opinion of the governing majority, such decisions might “lead to a legal anarchy”, hence the judges “attacking the legal order of Poland” should be held liable in disciplinary proceedings. In April 2020, the European Commission launched an infringement proceeding related to the provisions of the “Muzzle law” (see further: Changes in the judicial system and reactions of the EU).

Judges under threat

Since 2018, the number of disciplinary proceedings launched against judges has been growing. According to the information provided by the Disciplinary Commissioner to the Ombudsman, between June 2018 and January 2020 the Disciplinary Commissioner initiated preliminary enquiries in 152 cases and launched 68 disciplinary proceedings, 16 of which have been referred to disciplinary courts (the remaining ones are pending).¹⁶

The analysis of the launched proceedings indicates that the majority of disciplinary cases have been initiated against judges who criticise the ongoing reform of the judiciary for undermining judicial independence. Thus, the disciplinary proceedings often concern, among others, public statements made by judges, their substantive decisions that are not favourable for the governing majority’s political interests and any forms of engaging into protests in defence of the rule of law.

¹⁵ Court of Justice of European Union, [Case no C-192/18](#)

¹⁶ Rojek-Socha P., [152 sprawy w zainteresowaniu rzecznika dyscyplinarnego sędziów](#)

EXAMPLES OF DISCIPLINARY PROCEEDINGS AGAINST JUDGES¹⁷

Justice Włodzimierz Brazewicz acted as an announcer during a public meeting on the idea of law with another judge, justice Igor Tuleya, which took place in Gdańsk in September 2018. He was summoned to appear before the disciplinary officer in order to clarify why he had taken part in the meeting of a “potentially political” character.

Justice Alina Czubieniak is a judge of Regional Court in Gorzów Wielkopolski. Judge Alina Czubieniak repealed a decision of the court of first instance imposing pre-trial detention on an illiterate suspect with mental disability whose lawyer was not present during the hearing. In response to her decision, the disciplinary commissioner launched disciplinary proceedings. The Disciplinary Chamber found her guilty and admonished judge Czubieniak.

Justices Monika Frąckowiak and Arkadiusz Krupa appeared as guests at a music festival where they took part in a moot court, playing the roles of the presiding judges. It was meant to acquaint the participants – mainly young people – with the rules of behaviour in court and their procedural rights. The justices were later informed that the disciplinary officer was carrying out an investigation, in regard to the impairment of the authority of the office by wearing the official outfit (the gown and the chain) by them. After the investigation, the disciplinary officer has decided not to institute disciplinary proceedings against any of the judges, on grounds of their “lack of awareness of violating the law and judicial ethics”.

Justice Paweł Juszczyzn is a judge delegated to the Regional Court in Olsztyn who ordered the Head of the Chancellery of Sejm to reveal the lists of endorsements for judges-candidates for the positions in the National Council of the Judiciary. With regard to this decision, the Disciplinary Commissioner launched disciplinary proceedings against him and requested the Disciplinary Chamber to suspend the judge. The Disciplinary Chamber granted this request and Judge Juszczyzn remains suspended since February 2020.

Justice Krystian Markiewicz is a judge, a professor at the University of Silesia and the president of the Association of Polish Judges “IUSTITIA”. He was summoned by the disciplinary officer to testify in the proceedings regarding to “crossing the boundaries of the judge’s freedom of public speech concerning other judges and representatives of the constitutional state organs”.

Justice Bartłomiej Przymusiński, a judge and the spokesman for IUSTITIA Association, was summoned to testify as a witness before the Disciplinary Officer for Common Courts’ Judges. The judge has been long known for speaking critically of the recent changes in the judiciary (for instance, he called the process of appointing new members of the Supreme Court “a beauty contest” or described the creation of the new National Council of the Judiciary as “fully dependent from the Minister of Justice”).

Board of the Association of Polish Judges “IUSTITIA” and 13 judges of the Regional Court in Piotrków Trybunalski - the disciplinary commissioners launched disciplinary proceedings into cases of judges who had signed a statement expressing concerns related to the legality of

17 Helsinki Foundation for Human Rights, [Disciplinary proceeding against judges and prosecutors](#)

establishing of the Chamber of Extraordinary Control and Public Affairs in the Supreme Court, which is, among others, authorised to decide on the validity of elections.¹⁸

In its report, the umbrella organisation Committee of Judiciary Defence (Komitet Obrony Sprawiedliwości, KOS) documented numerous examples of harassing judges in a different manner than disciplinary proceedings. The repressions faced by judges have forms of smear campaigns in the media, transferring from one court's department to another or denying access to promotion procedure.¹⁹

Furthermore, another form of repressing judges are the attempts to hold them criminally liable. In order to do so, the prosecution has to make a request to the disciplinary court to waive a particular judge's immunity. The proceedings for waiving the immunity can be, in some cases, perceived as *quasi-disciplinary* proceedings.

SELECTED EXAMPLES OF PROCEEDINGS FOR WAIVING JUDICIAL IMMUNITY

Judge Igor Tuleya. In 2017, judge Tuleya adjudicated a case concerning a widely discussed case of limiting the access to the Parliament's session for the opposition MPs in 2016. During the session, the state budget was adopted. Judge Tuleya overturned the prosecution's decision and ordered to continue the investigation. While announcing his decision, judge Tuleya allowed the media to be present in the courtroom. In response to that, the prosecutor's office started to investigate into the alleged abuse of powers and dissemination of information from the investigation by judge Tuleya. In general, court sessions are held *in camera* without the presence of third parties, yet the presiding judge can decide to allow the audience to be present. The prosecution office submitted a motion to the Disciplinary Chamber to waive judge Tuleya's immunity, so the prosecutor could present him with charges. In June 2020, the Disciplinary Chamber denied the prosecutor's motion. However, on 18 November 2020, the Disciplinary Chamber, acting as a court of the second instance and having heard the prosecution's appeal, overturned the decision and lifted judge Tuleya's immunity. The latest resolution of the Disciplinary Chamber authorises the prosecution to charge judge Tuleya for having disseminated, publicly (through mass media) and without permission, information from preparatory proceedings conducted by the Circuit Prosecutor's Office in Warsaw, before such information has been disclosed in court proceedings. Additionally, judge Tuleya was suspended in his duties and his remuneration was lowered by 25%. The ruling is final.²⁰

Judge Beata Morawiec. One of the leaders of 'THEMIS' association for judges, judge B. Morawiec has long been known as a vocal critic of the governing majority with regard to changes

18 [Communication of the Disciplinary Commissioner for Judges of Common Courts](#)

19 Committee of Judiciary Defense, [Państwo, które karze czyli naciski i represje wobec polskich sędziów i prokuratorów](#)

20 Supreme Court, case no II DO 74/20

introduced in the area of justice and the rule of law. On 12 October 2020, the Disciplinary Chamber lifted her judicial immunity due to the suspicion that she had a private meeting with the defendant in one of the cases, and that during this meeting she accepted a gift (a cell phone worth *circa* EUR 100) from that person, which allegedly led to issuing a judgement favourable for the defendant. During the proceedings, the Disciplinary Chamber did not disclose fully the evidentiary material neither to the judge, nor her defence counsels. The Disciplinary Chamber's decision authorises to prosecute judge Morawiec for the abuse of power and bribery, suspends her and cuts her salary by 50%. However, the Disciplinary Chamber overruled this decision in June 2021 and refused to waive Judge Morawiec's immunity.²¹

Chilling effect

According to several studies carried out by civil society organisations, changes concerning the disciplinary regime against judges and the practice of launching proceedings against judges created an atmosphere of oppression and had chilling effect on the judiciary.

The identified forms of pressure on judges involved unreasonable criticism conveyed through the media, attempts to discipline judges (made both by disciplinary officers and other entities, including litigants), changes in managerial practices designed to hinder the work of individual judges, or violations of judges' right to privacy. All of these forms of pressure affected the private lives of some of the interviewees, impacting on their health and sense of security.

According to the findings of a HFHR report,²² the measures taken to pressurise judges have resulted in the occurrence of the chilling effect among part of their community. It cannot be ruled out that the fear of disciplinary consequences may become an increasingly important factor in the work of judges, or that it may affect their non-judicial activities.

Changes in the judicial system and reactions of the EU

Since 2018, the European Commission has launched four infringement proceedings related to the changes in the Polish judiciary system.

Two infringement proceedings concerned the lowering of the retirement age of common courts' and Supreme Court's judges. In June and November 2019, the European Court of Justice found that the provisions regulating the retirement age were contrary to the European Union law.

Two other infringement proceedings are related to the issue of disciplinary liability of judges. In April 2019, the European Commission launched the proceedings concerning the Polish regime of disciplinary liability for judges. In the opinion of the European Commission, the disciplinary regime "undermines the judicial independence of Polish judges by not offering necessary guarantees to

21 Supreme Court, case np. II DIZ 27/21

22 Helsinki Foundation for Human Rights, [The Time of Trial. How do changes in justice system affect Polish judges?](#)

protect them from political control, as required by the Court of Justice of the European Union”.²³ In its judgement of July 2021, the Court of Justice of the European Union ruled that the disciplinary regime for judges was not compatible with EU law. In particular, the Court found that the Disciplinary Chamber’s independence may give reasonable grounds to believe Polish judges are exposed to the risk of disciplinary proceedings for decisions they make, in particular for making requests for preliminary rulings to the CJEU.²⁴

In April 2020, the European Commission launched the infringement proceedings related to other aspects of the disciplinary regime against judges introduced (in February 2020) by the so-called “Muzzle law”. In the opinion of the European Commission, the law “undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. Moreover, the new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence”.²⁵ In July 2021, as a part of the proceedings, the CJEU ordered Poland to suspend the application of the provisions regulating the work of the Disciplinary Chamber in disciplinary and immunity proceedings concerning judges. As Poland did not implement the decision, in October 2021 the CJEU ordered financial penalty of EUR 1 million per day for failing to comply with the Court’s order.²⁶

1.5. Public prosecutor’s office

Public prosecution was one of the first institutions in Poland to be affected by the changes implemented since 2015. As a result of the adoption of the new law on the public prosecutor’s office, the functions of Public Prosecutor and the Minister of Justice have been merged again, equipping an active politician with certain new powers concerning criminal investigations. The politicisation of the prosecution, combined with changes in the disciplinary regime, has also led to a growing number of public prosecutors being disciplined.

New law on the prosecution

One of the first draft laws that the Sejm dealt with after the elections in 2015 was a reform of the public prosecutor’s office and the reunification of the offices of the Prosecutor General and the Minister of Justice.²⁷ The authors of the draft law motivated the reunification of the two offices by stating that, since their separation has not worked in practice, the public prosecutor’s office should be supervised by a member of the government.

The new law on the public prosecutor’s office conferred broad competences on the Prosecutor General, which were previously unknown. The Prosecutor General has obtained the status of

23 European Commission, [Rule of Law: European Commission launches infringement procedure to protect judges in Poland from political control](#)

24 European Court of Justice, case no C-791/19

25 European Commission, [Rule of Law: European Commission launches infringement procedure to safeguard the independence of judges in Poland](#)

26

27 [Draft law amending the Law on the Public Prosecutor’s Office](#), 2016.

a superior prosecutor in relation to prosecutors of common organisational units of the prosecution service and, as a result, given the power to fully interfere in their investigative activities.

In addition, any superior prosecutor, including the Prosecutor General, is now empowered to issue orders, guidelines and instructions that the subordinate prosecutor is required to carry out (e.g. the lodging of a complaint or the filing of an indictment). The Prosecutor General and the superior prosecutors are also entitled to take over the cases conducted by the prosecutors subordinate to them and to perform the activities falling within their competence. Additionally, the Prosecutor General may now request that certain operational and exploratory activities be carried out, which are directly related to the preparatory proceedings in progress.

Already at the stage of the legislative work, the draft amendment of the law on the public prosecutor's office was met with strong criticism. It has been pointed out that the new regulations pose a threat to the reliability of proceedings and to human rights and freedoms. The Supreme Court in its opinion stated that "the independence of the prosecutor in carrying out his or her statutory tasks, as declared in the draft, remains illusory".²⁸ The independence of prosecutors was also highlighted by the Venice Commission, which indicated that the amendments adopted risk politicising the activities of the Public Prosecutor's Office. In its opinion, the model linking the Public Prosecutor's Office with the work of the government requires an apolitical stance, autonomy and protection against political influence.²⁹

Disciplinary proceedings against public prosecutors

Amendments to the Law on the Public Prosecutor's Office also concerned the provisions governing disciplinary proceedings against public prosecutors. In place of the previous disciplinary courts, a Disciplinary Court at the Prosecutor General was established, with its president and deputy presidents currently nominated by the Prosecutor General himself. The act also introduced the function of Disciplinary Officer at the Prosecutor General, which has the right to take over the prosecution of any disciplinary proceedings.

The manner of appealing against decisions of courts of first instance was also changed. The new law introduced the possibility of an appeal to the Disciplinary Chamber of the Supreme Court. In those proceedings, following an appeal in favour of the appellant, the court may impose a more severe penalty on him, leaving only the opportunity to appeal to a different composition of the Disciplinary Chamber.

The new model of disciplinary proceedings constitutes a form of pressure exerted by the Prosecutor General-Minister of Justice on prosecutors, especially those taking part in public discussions on the independence of the prosecution and the rule of law, as well as those who have issued decisions or taken actions unfavourable from the point of view of the governing majority. For instance, prosecutor Krzysztof Parchimowicz was presented with numerous disciplinary charges concerning, among others, the issuance of a press release in protest against the instrumental

28 Supreme Court, [Opinion on the draft Law on the Public Prosecutor's Office](#), 8 January 2016.

29 European Commission for Democracy through Law (Venice Commission), [Opinion on the Act on the Public Prosecutor's Office](#), 11 December 2017.

use of investigations.³⁰ Another public prosecutor, Ewa Wrzosek, who initiated an investigation concerning the government's preparations to hold presidential elections during the pandemic, despite earlier statements of the National Prosecutor on the intention to launch disciplinary proceedings, now faces criminal charges for the alleged abuse of power.³¹

Moreover, another form of pressure exerted on public prosecutors can be identified in the last years, which is the practice of delegating prosecutors to other units of the prosecution, often located in distant cities. Such decisions were made by the National Prosecutor (the Prosecutor General's first deputy) with regard to, among others, prosecutors Katarzyna Kwiatkowska and Mariusz Krasoń, both active members of the association for public prosecutors Lex Super Omnia and vocal critics of the current prosecution's authorities. M. Krasoń, who was first seconded to a unit located almost 300 km away from his place of living for a half-year period in 2019, recently filed a lawsuit against his superiors in a labour court. In the judgement issued in June 2021 the court declared his delegation illegal and unjustified, stating also that decisions of the National Prosecutor were discriminatory.³²

2. Human rights protection

2.1. Rights of the LGBTI

OSCE Commitments Copenhagen 1990

(5.9) – all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

Since 2015 the number of legal and policy changes targeting LGBTI persons in Poland has grown significantly. This trend was reflected in, among others, ILGA Europe Rainbow ranking, which measures the protection of LGBTI community across the EU. As of 2020, Poland (for the second year in a row) continued to occupy the lowest ranking.³³

LGBT-free zones

In recent years, representatives of several local government units in Poland expressed attitudes unfavourable towards LGBTI persons. Starting in 2019, some local governments (at the level of

30 Lex Super Omnia, [The Association's position on the instrumental initiation of investigations](#), 14 February 2017.

31 D. Gajos-Kaniewska, [Chcą posłać prokurator Wrzosek do więzienia za śledztwo ws. wyborów kopertowych](#), Rp.pl, 17 September 2021.

32 M. Jałoszewski, [Prokurator Krasoń wygrał z prokuraturą Ziobry. Sąd: karne delegacje w Polskę bezprawne](#), OKO.press, 23 June 2021.

33 ILGA Europe, [Rainbow Europe 2021](#)

municipalities, counties and voivodeships) adopted resolutions “against LGBT ideology”, declaring that a given local government is “free from LGBT ideology”.³⁴

Although none of these documents defined the abovementioned ideology, the analysis of particular resolutions allows to get the gist of it. Hence, several of the resolutions oppose to the introduction of charters of rights of LGBT+ persons and the introduction of sexual education, perceived as means of depravation of the youth,³⁵ whereas the others criticise the promotion of attitudes that are unacceptable from the point of view of religious believers.³⁶ Strikingly, some documents explicitly link the occurrence of pornography acceptance, abortion, sexual violence and crisis of the family to “homo-terror and the sexualisation of life”.³⁷ One of the resolutions clearly defines the “LGBT ideology” as a “social movement involving homosexual, bisexual and transsexual persons”, at the same time expressing firm opposition to it.³⁸

Several local governments have also adopted the Local Government Charter of Family Rights, which, although not openly homophobic, excludes any public support for projects “undermining the constitutional identity of marriage as a union between a woman and a man”.³⁹

The adoption of the abovementioned statements by Polish local government units has met with reactions from EU institutions. In a resolution of 18 December 2019⁴⁰ the European Parliament indicated that “the creation of LGBTI-free zones, even if it does not involve physical barriers, constitutes an extremely discriminatory measure that restricts the freedom of movement of EU citizens”. Moreover, the European Commission decided,⁴¹ in July 2020, that the six municipalities that had adopted resolutions against “LGBT ideology” would not receive EU funding under one of its programs. The resolutions have also been condemned by, inter alia, the Commissioner for Human Rights of the Council of Europe.⁴²

Some of the resolutions of local governments were also questioned by the domestic Commissioner for Human Rights (the Ombudsman). In four cases, administrative courts declared resolutions of local governments invalid, pointing to their discriminatory nature. The Regional Administrative Court in Gliwice, assessing the resolution of the Istebna Community Council, emphasised that “the wording of the resolution (...) concerns LGBT people, has discriminatory effect on them, and said discrimination consists of exclusion from the community. (...) The inhabitants of the community form a self-governing community by law. (...) A community requires a bond between its members. It assumes their participation in common matters, the right to decide about them, as well as the right to function in public space. It also means a sense of belonging to a community established

34 Atlas of Hate, <https://atlasnienawisci.pl/>.

35 Statement of Zwierzyniec City Council, 29 October 2019.

36 Appendix to the resolution of Białystok County Council no IX/84/2019.

37 Statement of Niedzwica Duża Community Council

38 Statement of Kielce County Council

39 Ordo Iuris Institute for Legal Culture Foundation, [The Local Government Charter of Family Rights](#).

40 European Parliament, [European Parliament resolution on discrimination and incitement to hatred by LGBTI people in the public sphere, including LGBTI-free zones](#) (2019/2933 (RSP)), 18 December 2019.

41 M. Pankowska, [Komisarz UE: Polskie gminy nie dostaną funduszy z Unii, bo uchwaliły „strefy wolne od LGBT”](#), OKO.press,

42 Council of Europe Commissioner for Human Rights, [Memorandum on the stigmatisation of LGBTI people in Poland](#),

by the Constitution. The contested resolution deprives LGBT persons of these attributes, it is discriminatory against them".⁴³ Similar judgements have been issued subsequently by regional administrative courts in Warsaw, Lublin and Kielce, with regard to other city councils' resolutions. On the other hand, in two cases the courts found that resolutions "against LGBT ideology" did not have legal force, and therefore they were outside the scope of their judicial review. The Commissioner for Human Rights, however, disagreed with these decisions and appealed them to the Supreme Administrative Court.⁴⁴

In August 2020, the Minister of Justice decided to grant certain financial resources from the Justice Fund (a fund established, in the first place, to provide financial help to crime victims) to Tuchów, one of the several municipalities that adopted the Local Government Charter of Family Rights and declared their areas LGBT-free.⁴⁵ The municipality's application for EU funds was rejected and the town has lost a significant, from its point of view, source of budget income. In order to compensate for this loss, the Minister of Justice decided to subsidise the municipality with PLN 250,000 (approx. EUR 55,000) – a sum three times higher than the one supposed to be allocated by the EU. Interestingly, as it was revealed later, the municipality has never applied to the Ministry of Justice for such support.

In July 2021, the European Commission launched infringement proceedings related to the resolutions. In the Commission's opinion, "Polish authorities failed to fully and appropriately respond to its inquiry regarding the nature and impact of the so-called 'LGBT-ideology free zones' resolutions adopted by several Polish regions and municipalities".⁴⁶

Police activities and brutality towards LGBTI community

The growing pressure exerted on the members of LGBT+ community in Poland can also be exemplified by two events that occurred in 2020 in Warsaw and involved certain police activities aimed at its members. During one of these events, also acts of brutality on the part of the police occurred, raising serious concerns as to the correctness of the police officers' operation.

The first situation took place with relation to "Tęczowe Disco" ("Rainbow Disco"), a gathering which took place in front of the Presidential Palace in the evening of 11 June 2020. According to the event's organiser, the purpose of this happening was to convey a message to the President of Poland, Andrzej Duda (who was running for re-election then), that members of the LGBT+ community are not persons of a lower category.⁴⁷ Although there was no interference from the police during the event, after it had ended the police began to detain young people returning home. According to witnesses, the officers focused on those who were walking individually or in smaller groups, and deliberately omitting larger ones. The detainees were fined for violating

43 [Judgement of the Regional Administrative Court in Gliwice](#), case no III SA/GI 15/20, 14 July 2020.

44 Poland, [Commissioner for Human Rights, Czwarta uchwała samorządu "anty-LGBT" uchylona przez sąd ze skargi RPO](#)

45 Ministry of Justice, [Support from the Justice Fund for municipalities disregarded in EU town-twinning programme](#),

46 European Commission, [EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people](#).

47 P. Korzeniowski, [Po spokojnym "Tęczowym Disco" policjanci urządzili łapankę na młodych ludzi](#), noizz.pl

COVID-19 restrictions by participating in an illegal assembly. Such selective targeting of the event's participants raised concerns of the Ombudsman.⁴⁸

The most notable situation involving police brutality, however, took place on 7 August 2020. On that day, a spontaneous rally was held in Warsaw in reaction to the prosecution's motion for pre-trial detention of Margot, an activist of the "Stop Bzdurom" ("Stop the Nonsense") collective. Margot faced criminal proceedings with regard to property damage – cutting with a knife the tarpaulin of a van with homophobic statements on it, which was owned by a right-wing organisation. She was detained in July 2020 but the prosecution's first motion for arrest was dismissed by the court; on 7 August 2020 a higher court decided, however, that pre-trial detention should be applied.

The court's decision has met with a definite reaction of LGBTI persons and their allies gathered in Krakowskie Przedmieście in Warsaw, who started a sitting protest in order to prevent a police car with Margot from leaving the police station and heading to custody. As a result of the police intervention, the car has left eventually, and the police started to ask the participants for identification and apprehend them. In total, 48 persons were detained on that day, many of whom were selected by the police largely at random, despite the lack of legal and factual grounds (e.g. only because they watched the events or carried a rainbow flag).⁴⁹

As highlighted in the Report of the National Mechanism for the Prevention of Torture, the treatment of detainees during the protest on 7 August 2020 amounted to degrading treatment, and in some cases, taking into account the intensity of police irregularities, could also amount to inhuman treatment. The report discloses cases of brutal treatment by officers as well as the use of disproportionate force. Most of the detainees were strip searched and forced to squat (sometimes repeatedly). Moreover, some of the detained were hindered from contacting a lawyer after the detention and some lawyers reported problems with locating their clients.⁵⁰

According to NGOs, the activities of the police on 7 August 2020 constituted one of the largest repressive actions against the LGBTI community in Poland since 1989.⁵¹

2.2. Women's rights

OSCE commitments

Istanbul Document, 19 November 1999

[...]

23. The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are

48 Commissioner for Human Rights, [Selektywne zatrzymania po „Tęczowym Disco”. Rzecznik występuje do stołecznej policji](#)

49 Helsinki Foundation for Human Rights, [Pandemia, kryzys praworządności, wyzwania dla praw człowieka](#), 2020

50 Commissioner for Human Rights, [Nie tylko poniżające traktowanie... Końcowy raport KMPT o zatrzymaniach 7 sierpnia w Warszawie](#)

51 Helsinki Foundation for Human Rights, [Pandemia, kryzys praworządności, wyzwania dla praw człowieka](#), 2020

committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization.

24. We will undertake measures to eliminate all forms of discrimination against women, and to end violence against women and children as well as sexual exploitation and all forms of trafficking in human beings. In order to prevent such crimes we will, among other means, promote the adoption or strengthening of legislation to hold accountable persons responsible for these acts and strengthen the protection of victims. [...]

Violence against women⁵²

In January 2015, after heated discussions, the Sejm adopted the Council of Europe's Convention on preventing and combating violence against women and domestic violence. The MPs of the Law and Justice party (then in opposition), strongly opposed the adoption of the Convention, pointing out that it poses a threat to the traditional definition and role of the family and will also serve to "promote gender ideology".

The Convention, which in fact provides a framework for preventing, combating and prosecuting domestic violence and violence against women, has been repeatedly criticised by right-wing MPs and conservative NGOs. Less than a year and a half after the ratification of the Convention, the media reported that the government was working on a draft law to denounce the Convention.

Although this process has never commenced, the government has not taken any action to implement the provisions of the Convention – no institution has been established to coordinate government plans to prevent violence, no provisions of the Code of Criminal Procedure to define rape or economic violence have been adapted to the provisions of the Convention, and no specialist assistance system for victims of violence has been established.

In July 2020, the Minister of Justice directed to the government a motion to withdraw from the Istanbul Convention. In response to this, the Prime Minister informed that he had directed a motion to the Constitutional Tribunal to verify the Convention's compliance with the Constitution. The proceedings in this case are still pending.⁵³

At the same time, organisations dealing with anti-discrimination and protection of rights were struggling with unprecedented difficulties. In 2017, the police searched the offices of the women's organisations: BABA and the Women's Rights Centre, and secured the documentation maintained by these organisations. In turn, the Minister of Family, Labour and Social Policy, after an inquiry by one of the right-wing MPs concerning the use of funds from the ministerial fund for anti-discrimination projects, terminated the grant agreement with the Autonomia Foundation, despite the fact that an audit of the project did not reveal any infringements related to the spending of these funds.⁵⁴

52 Helsinki Foundation for Human Rights, [Ruled by law. Threats to human rights protection in 2015-2019](#)

53 Gazeta Prawna, [Morawiecki: TK najlepiej potrafi wypowiedzieć się ws. zgodności konwencji stambulskiej z konstytucją](#)

54 Gazeta Lubuska, [Policja przeszukała biura organizacji kobiecych. Opozycja protestuje](#)

Reproductive rights

On 22 October 2020, the Constitutional Tribunal declared abortion on the grounds of severe or fatal impairment of the foetus unconstitutional. By eliminating one of the three legal grounds for abortion, the court's decision has outlawed access to the procedure in Poland almost entirely, except for cases of pregnancy resulting from prohibited acts, or if the mother's health or life is in danger due to her pregnancy.⁵⁵

Before the CT's judgement, the Act on family planning allowed for abortion in three situations: 1) if the pregnancy threatened the mother's life or health; 2) due to severe and irreversible foetal defect or incurable illness that threatens the foetus' life; 3) where the pregnancy resulted from a prohibited act (i.e. rape or incest).⁵⁶ Under such state of the law, the total number of registered abortions in Poland has remained fairly stable in the last years. According to the official data, there were 1076 abortions in 2020, out of which 1053 (98%) were performed due to foetal abnormalities,⁵⁷ which is the legal ground questioned by the CT. On the other hand, although the actual size of underground market for abortions in Poland remains elusive, it is estimated by pro-choice NGOs to amount to 150,000 procedures conducted annually.⁵⁸

By excluding the access to abortion because of foetal impairment, the Constitutional Tribunal's decision has led to an almost complete ban on the procedure. As a result, the judgement ignited the biggest street protests in Poland since 1989 (according to some, the biggest in the country's history).

As a result of Constitutional Tribunal judgment, women were forced to give birth to children with severe or fatal impairment, which violates human rights standards. On 8 October 2021, the European Court of Human Rights (hereinafter ECtHR) communicated to the Polish government the case *M.L. v. Poland*,⁵⁹ concerning a refusal to conduct abortion on the grounds of foetal abnormality after the date of publication the CT's judgement. The applicant, who had the procedure scheduled for 28 January 2021 in a public hospital, was denied it after the CT's decision had been published the previous day. She learnt that all abortions based on the questioned ground had been cancelled and was forced to have the procedure performed in another EU country (in a private facility).⁶⁰ The applicant raised in particular that, by making her choose between giving birth to a foetus with an ascertained severe defect and going abroad to have an abortion performed, Poland had violated the prohibition of torture (Article 3 of the European Convention of Human Rights, ECHR).

55 Constitutional Tribunal, [Judgement of 22 October 2020, case no K 1/20](#)

56 Poland, Act on family planning, protection of human foetus and conditions of admissibility for pregnancy termination (*Ustawa o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży*), 1 March 1993, Article 4a.

57 W. Ferfecki, [Raport Ministerstwa Zdrowia: 1076 aborcji w Polsce w 2020 r. W tym legalne byłyby 23](#), Rp.pl.

58 M. Nowak, [Dzwonią kobiety, którym szpital właśnie odwołał aborcję. Pomożemy wszystkim \[ROZMOWA\]](#), OKO.press

59 Case of [M.L. v. Poland](#), application no. 40119/21.

60 D. Sitnicka, [Trybunał w Strasburgu oceni wyrok TK o aborcji pod kątem zakazu tortur i prawa do sądu](#), OKO.press

The ECtHR already communicated to the Polish authorities (in January 2021) another case concerning the lack of access to abortion based on severe foetal impairment (*B.B. v. Poland*).⁶¹ The applicant in that case also raised a complaint of violation of her rights protected under Article 3 ECHR. In addition, Poland still has not taken general measures to implement previous ECtHR judgments in the cases *Tysi c v. Poland*⁶² and *R.R. v. Poland*,⁶³ concerning, respectively, access to legal abortion due to a threat to mother's health and prenatal genetic testing.

Recently, a heated debate arose again as to the practical results of the CT's judgement with regard to a tragic death of a 30-year-old pregnant woman in a hospital in Pszczy na. According to the prosecution's findings, the woman was admitted to the hospital feeling unwell in her 22nd week of pregnancy (after her water had broken), where the foetus' severe defects, enabling termination of the pregnancy, were confirmed by doctors.⁶⁴ The woman died the next day due to the septic shock and infection, which might have resulted directly from the foetus' earlier demise in her womb. In the opinion of the late woman's legal representative, the delay in conducting abortion until the foetus dies of natural causes in this case was the result of the legal uncertainty and chilling effect, caused by the CT's decision.

The CT's ruling of 22 October 2020 resulted from a motion for the review of constitutionality of the existing provisions allowing for abortion on the grounds of foetal impairment, filed in 2019 by a group of over 100 conservative lawmakers. This motion was preceded by several other attempts to tighten the abortion law. In 2016, a citizens' draft bill, sponsored by the "Stop Abortion" committee, was rejected by the parliament, after having ignited mass protest across the country. In 2017, a group of the governing majority's MPs (including the current CT's judge K. Paw owicz, member of the bench adjudicating the case in October 2020) lodged a motion for constitutional review of the abortion law in the CT, but the proceedings were discontinued because of the end of tenure of the parliament.⁶⁵ The motion was repeated after the new parliament had convened in November 2019.

Moreover, a new draft act replacing the abortion law of 1993 has been proposed by a group of citizens. The amendment aims at introducing a complete ban on abortion in Poland by excluding the remaining two legal grounds, as well as tightens drastically criminal liability for the procedure (equating abortion with homicide and introducing, for the first time since 1932, criminal liability of a pregnant woman). The first hearing of the bill in the Sejm is scheduled for 1 December 2021.⁶⁶

61 Case of [B.B. v. Poland](#), application no. 67171/17.

62 Case of [Tysi c v. Poland](#), judgement of the ECtHR of 20 March 2007.

63 Case of [R.R. v. Poland](#), judgement of the ECtHR of 26 May 2011.

64 J. Ojczyk, [Wyrok TK groźny dla pacjentek i lekarzy. Potrzebne standardy dzia ania](#), Prawo.pl

65 Poland, Constitutional Court, Decision of 21 July 2020, case no. K 13/17.

66 A. Mat acz, [Na pocz tku grudnia Sejm zacznie prace nad projektem zaostrzaj cym prawo aborcyjne](#), Prawo.pl

2.3. Media freedom

OSCE commitments

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE 29 June 1990, Copenhagen

(9) The participating States reaffirm that

(9.1) — everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(...)

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively,

COMMITMENTS

individually or in association with others, to their promotion and protection, the participating States express their commitment to

[...]

(10.1) — respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information.

(10.2) — respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

Since 2015, the protection of journalists and freedom of speech has been gradually narrowed. The trend includes massive changes in the public media, a growing number of court proceedings launched against journalists, incidents of physical violence on journalists and changes in the ownership of private media.

Public media

In December 2015, the Parliament adopted legal provisions that equipped the Minister of State Treasury with the right to dismiss and appoint members of supervisory boards and management boards of public media. The new management of the Polish public radio and television was

appointed right after the law came into force. The changes in the management of the public media were accompanied also by massive dismissals and resignations of journalists working in the media.

After the changes at the management level, the Parliament also adopted new legislation that established the National Media Council. The Council is composed of five members, elected by the Parliament and the President for a six-year term. The Council is responsible for appointing and dismissing the management boards and supervisory boards of public radio and television, as well as the Polish Press Agency.

The introduction of the regulations concerning the National Media Council has been criticised, among others, for the lack of a transparent procedure for appointing members of the Council and defining the criteria to be met by members. The new regulations also did not introduce any additional regulations which should be followed by the Council when appointing members of public media authorities.

Attacks on journalists

Since 2015, civil society organisations have been observing a growing number of lawsuits lodged against journalists in relation to their professional work. The lawsuits are initiated by the governmental agencies, state bodies or representatives of the governing majority. Given the abusive character of some of the cases, they can be considered as Strategic Lawsuit Against Public Participation (SLAPP).⁶⁷

One of the most important examples from recent years of this trend were the activities of the Polish Security Printing Works (Polska Wytwórnia Papierów Wartościowych, PWPW), which in 2016 sued the publisher of *Gazeta Wyborcza*, demanding an apology and a compensation of PLN 100,000 for seven publications concerning the situation in PWPW. The lawsuits concerned not only the facts described in the press articles, but also the terms used in them (e.g. “the Polish Security Printing Works tries to freeze the *Wyborcza* newspaper”). With regard to *Newsweek*, the Polish Security Printing Works demanded PLN one million in damages, and its president filed a private indictment against the author of the publication.⁶⁸

Furthermore, since 2015 the civil society organizations and media have also reported on a rise in the number of physical attacks directed at journalists. For example, in 2020, a photo reporter was attacked by participants of the far-right assembly of 11 November (the Independence March).⁶⁹ In December 2020, another photo reporter was arrested by the Police while covering the protest before the building of the Ministry of National Education.⁷⁰

67 Media Freedom Rapid Response, [“Democracy Declining” Erosion of media freedom in Poland](#)

68 Helsinki Foundation for Human Rights, [Ruled by law. Threats to human rights protection in 2015-2019](#)

69 M. Woźniak, [Pocisk trafił w twarz fotoreportera na Marszu Niepodległości. Prokuratura umorzyła sprawę. Tomasz Gutry: Jestem wkurzony](#), *Gazeta Wyborcza*

70 TVN24.pl, [Fotoreporterka zatrzymana przed MEN. Rzecznik KGP: policjanci nie wiedzieli, że to dziennikarka](#)

Changes in the ownership of private media

Since 2015, the representatives of the governing majority have been presenting the idea of “re-polonisation” of the media in Poland. The idea is based on the assumption that large concentration of the private media by the foreign capital threatens the freedom of speech and information in Poland.⁷¹ Despite numerous public declarations, the draft legal changes introducing the idea of “re-polonisation” of media have never been presented. Instead of this, due to some political decisions and attempts of legal changes targeting specific media outlets, the governing majority tries to influence the situation on the private media market.

The acquisition of Polska Press group

On 7 December 2020 PKN Orlen, Polish state-controlled oil company, informed on the plan to extend its activity in media sector through acquiring of one of the biggest publishing groups in Poland, Polska Press.⁷² According to the official press release, the aim of this decision is to enhance retail sale within Orlen Group, which has been enshrined as one of the goals in the company’s strategy to be achieved by 2030, as well as to develop big data tools supporting sale. It is estimated that the total price to be paid to the current owner of the entity, a German capital group Verlagsgruppe Passau, amounts to EUR 22 million.⁷³ In February 2021, the transaction was approved by the Office of Competition and Consumer Protection (the decision is not final, however, as it was appealed against by the Commissioner for Human Rights and the court imposed a stay order with regard to it).⁷⁴

Polska Press, during its 26-year activity, has created one of the largest media and publishing groups in Poland. The most crucial part of its portfolio are local press titles, including 20 daily newspapers (at least one per each of the 15, out of total 16, capitals of regions in Poland), and almost 150 local weekly magazines.⁷⁵ The group also runs numerous popular on-line services, the biggest of which is a local news platform Naszemiasto.pl, as well as dedicated websites of its press titles.

The acquisition of Polska Press and its media outlets by the major state-owned company raised serious concerns from the perspective of protecting local media independence and pluralism.⁷⁶

The proposed new media tax

In February 2020, the Polish government presented a draft law introducing the tax on advertising revenues which, depending on the size of the company, would range from 2% to 15%. Despite

71 Polityka, [Repolonizacja mediów, czyli co zamierza PiS](#)

72 PKN Orlen, [PKN Orlen to take over Polska Press \(press release\)](#)

73 M. Zatoński, [Orlen kupił media regionalne](#), Puls Biznesu

74 Poland, The Commissioner for Human Rights, [Sąd ws. wstrzymania kupna Polska Press przez PKN Orlen: chodzi o zabezpieczenie przed ewentualnymi nieodwracalnymi skutkami koncentracji](#),

75 M. Burlikowski, [“The Economist”: Orlen mógłby przejąć Polska Press](#)

76 See e.g. International Press Institute, [Purchase of Polska Press by state energy giant spells disaster for media freedom in Poland](#)

the government's announcements that the new tax would be mainly targeting the largest Internet companies, in practice the new law would lead to an unfair extract of money from largely Polish media companies. Over 40 media companies protested against the new legislation by suspending reporting for an entire day on 10 February 2021.⁷⁷ The work on this law was eventually suspended.

The so-called “lex TVN”

On 11 August 2021, the lower chamber of the Parliament (Sejm) passed a law that prohibits companies from outside the European Economic Area (EEA) from owning – directly or indirectly – a majority stake in media companies based in Poland. While the law was framed in general terms and its initiators claimed it was meant to protect state security, it effectively targeted only one entity: the US-owned TVN group. TVN is the largest private television in Poland (thus, the law became immediately known as “lex TVN”). The law was widely perceived as a measure aimed at forcing the TVN group US owner, Discovery Inc., to sell its shares to entities that will be under control of the ruling party.

In parallel to the legislative developments, TVN24, a TVN-owned channel, waited for a decision of the National Broadcasting Council (KRRiT) on the renewal of its 10-year broadcasting license. The license was about to expire on 26 September 2021 and, even though the station had applied for the renewal in February 2020, the regulator did not issue any decision for 18 months. Such length of the proceedings was unprecedented and particularly excessive for the renewal of a license, for which the Broadcasting Act envisages a simplified examination of applications. Eventually, the Council renewed TVN's license.

2.4. Migrants' rights

OSCE Commitments

Istanbul Document, 1999

Charter for European Security par. 22

22. [...] We reaffirm our commitment to respect the right to seek asylum and to ensure the international protection of refugees as set out in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as to facilitate the voluntary return of refugees and internally displaced persons in dignity and safety [...]

The European migration crisis of 2015 coincided in Poland with the beginning of the parliamentary electoral campaign. The state's policy towards migrants became the key, polarising element of the political debate. The Law and Justice party presented a strong, anti-migrant rhetoric without any recognition of Poland's obligations resulting from the international law. Right after the elections in October 2015, the new government opposed the quotas for relocation of refugees adopted by the previous government.

⁷⁷ See further Politico, [Polish media suspend reporting to protest planned tax on advertising](#)

Brześć/Terespol pushbacks

The government's anti-migration approach was most visible in the policies adopted at Brześć/Terespol border crossing. In 2016, Poland issued the largest number of decisions on the refusal of entry out of all EU Member States, i.e. as many as 118,202. As many as 75% of foreign nationals who were refused entry into the territory of Poland tried to cross the border at the crossing point in Terespol.⁷⁸

The monitoring conducted by civil society organisations and the Commissioner for Human Rights has shown significant violations concerning the refusal to accept applications for international protection from foreign nationals on the part of the Polish Border Guard. Persons trying to cross the border were not allowed to submit their motions for protection and were denied access to a lawyer or any assistance. The group of foreigners who were denied access to international protection included, among others, children and persons from vulnerable groups. At its peak, the groups of migrants travelling to Brześć/Terespol border crossing reached 3,000 people.

This policy has resulted in a progressive decrease in the number of people seeking international protection in Poland.

Humanitarian crisis on the Polish–Belarusian border

In August 2021, Poland experienced a sharp increase in the number of migrants irregularly crossing their external borders from the side of Belarus. It is a result of the policy implemented by the Belarusian authorities, aimed at exerting a political pressure on the EU. A. Lukashenko's regime is accused of facilitating arrivals of third country nationals to EU borders and encouraging them to enter the EU in an unauthorised manner.⁷⁹

Alongside the migration crisis, also the humanitarian crisis has escalated quickly. According to the official information provided by the Polish authorities, eight people have died in the woods close to the border due to, among others, harsh weather conditions and the lack of any humanitarian support.⁸⁰ However, information gathered from the third-country nationals by the human rights groups acting at the border show that this number may be higher.

The Polish government persistently refuses the humanitarian groups to access the state-of-emergency zone introduced along the border area. As of September 2021, when the state of emergency was introduced along Poland's border with Belarus, both civil society organisations and journalists were denied access to zone.

With the escalation of the crisis on the border, civil society organisations have reported numerous cases of push-back of migrants who are captured by the Border Guard in the state-of-emergency zone and beyond it. In most cases, migrants are transferred to the border without launching any administrative procedure and despite their repeated requests for asylum in Poland.

78 Helsinki Foundation for Human Rights, [Ruled by law. Threats to human rights protection in 2015-2019](#)

79 EUobserver, [Lukashenko's refugee-abuse to see new EU sanctions](#)

80 TVN24.pl, [Co wiemy o migrantach, którzy zmarli na granicy](#)

Civil society groups documented a number of cases concerning migrants of vulnerable groups (families travelling with children, persons with disabilities or elderly people), who were pushed back by both Polish and Belarusian Border Guard and who had no access to any legal procedures.⁸¹

Further legal changes

In 2021, the Parliament adopted an act amending the provisions of the migration law. The new provisions provide for a simplified procedure of returning migrants who have crossed the border of Poland in an unauthorised manner. According to it, foreigners may be obliged to leave the territory of Poland even if they make an application for international protection and without assessing the risk of human rights violation. The removal order is immediately enforceable, whereas an appeal against it shall not have a suspensive effect. The provisions also allow for leaving the foreigners' applications for international protection without examination when submitted by migrants apprehended immediately after crossing the EU's external border illegally. The amendments were criticised by civil society organisations,⁸² ODIHR⁸³ and UNHCR⁸⁴ as violating the principle of non-refoulement.

3. Democratic processes

3.1. Presidential elections

OSCE Commitments

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

29 June 1990, Copenhagen

I.

(...)

(7) (...) the participating States will

(...)

(7.7) —ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

81 See e.g. The Guardian, [Poland border crisis: What happens to migrants who are turned away?](#)

82 [HFHR comments](#), [Legal Intervention Association comments](#)

83 OSCE Office for Democratic Institutions and Human Rights, [Urgent opinion on draft amendments to the Aliens Act and the Act on Granting Protection to Aliens on the Territory of the Republic of Poland and Ministerial Regulation on Temporary Suspension of Border Traffic at Certain Border Crossings](#),

84 UNHCR, [Observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland \(UD265\)](#),

In 2020, the Polish governing majority changed its strategy for conducting presidential elections during COVID-19 pandemic several times. As a result, for the first time in history, presidential elections were not organised within the time limit prescribed by law, whereas the new act that allowed to re-schedule the elections might have violated the principle of equality by favouring the already-nominated candidates. In addition, the electoral campaign was aimed at the polarisation of voters on an unprecedented scale.

Elections scheduled for 10 May 2020

The date of the presidential elections was initially scheduled for 10 May 2020. Soon, the developing pandemic called into question, among others, the possibility of running the electoral campaign and voting. The government has abstained from declaring the state of natural disaster, which enables to postpone elections. Instead, the Parliament adopted new laws in March and April 2020 that allowed for postal voting. Apart from other legal defects, the new pieces of legislation violated the prohibition of adopting new laws concerning elections within 6 months before their scheduled date.⁸⁵ Although these new laws had not been passed in the opposition-dominated Senate, the Prime Minister ordered to make preparations for the postal elections and to print ballot papers. In September 2020, a regional administrative court declared one of these decisions null and void as manifestly violating the law.⁸⁶ Another act, adopted in April 2020, resulted in the lack of authority competent to establish the ballot paper template and to legally commission printing of such papers.

Eventually, the matter of presidential elections scheduled for 10 May 2020 has been settled by an unparalleled agreement of the ruling majority's leaders J. Kaczyński and J. Gowin, who stated that after "the anticipated decision of the Supreme Court declaring elections null and void given that they had not taken place" was issued, a new date of the presidential elections would be announced by the speaker of the Sejm.⁸⁷ This declaration was followed by a resolution of the National Electoral Commission, ascertaining that it was impossible to vote for candidates on 10 May 2020, which was equivalent to the lack of candidates – a legal basis for invalidation of presidential elections.

New act on presidential elections (June 2020)

On 2 June 2020, the Sejm adopted a new act that regulated voting in presidential elections. This new piece of legislation reinstated the possibility for postal voting for everyone, at the same time maintaining the ordinary ballot. Furthermore, according to the act, the already functioning electoral committees could continue their activities without new registration, as well as new candidates could be appointed. The speaker of the Sejm scheduled the new elections for 28 June 2020.

The new act favoured the already-registered candidates' committees in terms of their financial situation. According to the new law, these committees were entitled to spend the entire amount

85 M. Kalisz, M. Szuleka and M. Wolny, „2020. Pandemia ...”, p. 34.

86 Regional Administrative Court in Warsaw, Judgement of 15 September 2020, case no VII SA/Wa 992/20.

87 Tvn24.pl, „[Wspólne oświadczenie Kaczyńskiego i Gowina. Nie będzie wyborów 10 maja](#)”, 6 May 2020.

of financial resources available for them in the presidential elections scheduled for May 2020, plus half of the amount available in the new electoral campaign, whereas the newly-registered committees were entitled only to the latter. In absolute terms, the difference was approx. EUR 6.5 million to EUR 2 million in favour of the “old” committees.

Fierce election campaign

Polish Presidential elections of 2020 were preceded by an extremely fierce campaign aimed at the polarisation of voters. First, the use of strong anti-LGBTI rhetoric was very visible, in particular on the part of the governing majority’s politicians and the candidate backed by them, with statements explicitly dehumanising members of the LGBTI community not being uncommon⁸⁸ (see further: point 2.1 LGBT rights). Second, the incumbent president’s campaign was conducted with a strong support from the public media, in particular the television, where negative coverage of the opposition’s candidate, as well as the disproportionate distribution of broadcasting time in favour of the current president, were apparent. In the opinion of OSCE, the partiality of public television’s coverage resulted in voters’ limited access to exhaustive information that could help them make a decision.⁸⁹

3.2. Legislation process

OSCE Commitments

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991

(18.1) Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives.

Non-governmental organisations participate in the process of social consultations, as well as perform, among other things, the tasks commissioned by the state administration. Both these processes should be based on the principles of transparency and participation. However, since 2015, the practice of cooperation between civil society organizations and the states authorities has been steadily deteriorating.

The data published by the Civic Legislative Forum shows that in the period 2015-2019, laws were adopted more and more frequently without proper social consultation and in a non-transparent manner.⁹⁰ The pace of the proceedings for the adoption of key changes in the judicial system was particularly striking. For example, the changes to the Act on the Constitutional Tribunal were

88 The words of a then-deputy P. Czarnek stating that LGBT persons “are not equal to normal people” being the most prominent example. See D. Sitnicka, „[Słowa Czarńka o LGBT „ci ludzie nie są równi ludziom normalnym” wyrwane z kontekstu? Akurat](#)”, OKO.press,

89 OSCE ODIHR, “[Poland, Presidential Election, 28 June and 12 July 2020: ODIHR Special Election Assessment Mission Final Report](#)”

90 Batory Foundation, [XII Raport Obywatelskiego Forum Legislacji](#)

adopted in just over a week (with the significant part of the work taking place at night). Also, the report on the legislative process in 2020 indicates the continuation of this trend: the legal changes adopted in 2020 were also passed at an accelerated pace and without proper consultations.⁹¹

Furthermore, the remarks received during the consultations were not always published and the responsible authorities almost never responded to the received remarks. According to the data collected by the Polish Federation of NGOs, since 2015 in 60 cases the state's agencies and ministries have breached the rules of transparency and participation when it comes to organising social consultations or the process of distributing public funds for NGOs.⁹²

3.3. Civil society space

OSCE Commitments

Istanbul Document 1999

[...]

(27) Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.

Since 2015 there have been several legal and policy changes that affected the space for the civil society.

Access to public funds

The first disturbing trend concerns the limitation of access to public funds for non-governmental organisations. This practice is reflected in the deterioration of standards for organising public calls for proposals. According to the data gathered by the Polish Federation of Non-Governmental Organisations, in the period between late 2015 and early 2017, 19 calls for proposals organised by the authorities at the national level were annulled or organised with a very short deadline (e.g. the deadline for presenting offers was 7 days from the call's publication). The same research shows other malfunctions, e. g. an announcement on public consultations of the programme of cooperation between the Ministry of Foreign Affairs and NGOs was published under a link "car sale".⁹³

Furthermore, there are examples of decisions on distributing public funds in a way that favours specific organisations with links to the governing majority. For example, in July 2016, the Ministry

91 Prawo.pl, [Legislacja w Polsce 2020 r. - kolejny raport o inflacji prawa](#)

92 OFOP, [Raport z Repozytorium Ogólnopolskiej Federacji Organizacji Pozarządowych. Zestawienie udokumentowanych przypadków naruszania zasad współpracy z organizacjami pozarządowymi w okresie XI 2015 - XI 2018](#)

93 Polish Federation of Non-governmental Organisations (OFOP), [Repozytorium](#)

of Foreign Affairs announced that the grant to establish Regional Centres for International Debate had been awarded to an organisation established in 2015, even though the rules of the call required that a bidder have a documented experience from the period 2013-2015. The funds from the same call were also granted to a catholic organisation, Academia, which had not previously dealt with the issues related to international policy.⁹⁴

Another trend concerned the distribution of funds for organisations helping migrants and refugees. First, the Ministry of Internal Affairs announced that the call for proposals within the Asylum, Migration and Integration Fund had been annulled. Then, the Ministry announced new calls for proposals, in which over 2,500,000 PLN (approx. 625,000 EUR)⁹⁵ were supposed to be distributed, yet the announcement of the calls' results was significantly delayed. Finally, the Ministry changed the way of distributing the funds in a manner that partially excluded NGOs from the process.⁹⁶ The lack of access to public funds forced some of the civil society organisations dealing with migrants and refugees to cease their functioning.⁹⁷

Freedom of assemblies

In December 2016, the Parliament adopted amendments to the Act on assemblies. The amendment introduced the concept of "cyclical assemblies" (organised on an annual basis within last three years or at least four times a year). A voivode (province governor), who is an official of the government administration at the local level, shall decide whether a given assembly is deemed cyclical. Almost 200 non-governmental organisations petitioned the President to veto the amendment. As the NGOs have warned, the introduction of cyclical assemblies contravenes the civic nature of the constitutional freedom of assembly and may be used as a tool for abusing powers by public authorities.⁹⁸ The President directed the law to the Constitutional Tribunal, however, in March 2017, the Constitutional Tribunal ruled that this law was constitutional.

The application of the new provisions of the law on assemblies has caused a number of practical problems, both in terms of recognising the precedence of cyclical assemblies over ordinary ones, as well as using the provisions of the new law to restrict assemblies other than counter-demonstrations. It occurred relatively often that if an ordinary assembly has been registered in a place where the cyclical assembly was supposed to be organised, the voivode was authorised to ban the former. In practice, however, the voivodes' decisions are issued with a delay and not leaving enough time to challenge them before courts.

Stigmatisation of civil society organisations and activists

Since 2015, the government and public media carried out several smear campaigns targeting specific groups of civil society.

94 Stankiewicz A., [Strumień dotacji dla o. Rydzyka](#), Rzeczpospolita

95 Ministry of Interior, Department of Border Policy and International Fund, [Dwa nowe nabory w ramach Funduszu Azylu, Migracji i Integracji](#),

96 NGO.pl, [Integracja cudzoziemców. „Organizacje mają kompetencje. Ale pieniądze ma wojewoda”](#)

97 Pazderski F., [2019 Civil Society Organization Sustainability Index Poland](#), ISP

98 Helsinki Foundation for Human Rights, [Apel 194 organizacji do Prezydenta RP](#)

In the end of October 2016, the public media carried out a smear campaign aimed at certain civil society organisations whose work concentrates on the rule of law and human rights, and which had received public funding for their functioning. The campaign began with news reports originally focusing on the former judge of the Constitutional Tribunal who currently strongly criticises the reforms of the Tribunal, including undermining its independence by the governing majority. The public media used the fact that the judge was a board member of a particular CSO in order to attack the organisation and alleged that this organisation received public funding in a fraudulent way.

A similar approach was taken towards other CSOs. Relying on publicly available documents, the broadcasts suggested that some organisations received funds in a non-transparent way and owing to family or personal ties. While making these allegations, the broadcasts were not backed by any evidence of a breach of law or any other irregularities, such as wasting public funding.⁹⁹ For example, Akcja Demokracja, one of the leaders of the civil society's massive protests against the reforms of the judiciary in 2017, was targeted by public media in July and August 2017. The campaign, run by the public media and far-right press, concentrated on "revealing" the sources of financing of the organisation (whereas all information was publicly available at its website). The media suggested also that Akcja Demokracja implemented the priorities of the German government in Poland since two of its major donors have offices registered in Germany.¹⁰⁰

In May 2018, the Minister of Internal Affairs filed a motion for receivership of the organisation Citizens of the Republic (Obywatele RP). Citizens of the Republic are a group of street activists who have protested against the government's reforms and policies since the end of 2016. The Foundation is known for using civil disobedience in their actions – usually they organise peaceful counter-demonstrations to the assemblies organised by the government or organisations supporting the government. The Minister of Internal Affairs, who supervises the functioning of the organisation, justified the motion by stating that the organisation "has repeatedly violated the law". The court dismissed the Minister's motion in November 2018.¹⁰¹

In July 2020, the President of Poland presented a draft law amending the Act on education. In the light of the proposal, every organisation conducting additional classes for pupils in schools would be obliged to present additional documentation, regarding the plan of the classes (including "the upbringing ideas that the project will implement") and the organisation itself. These documents would be verified by parents who would vote to decide whether to grant the organisation permission to conduct the additional classes (currently, any extracurricular classes in schools are organised based on the consent of the schools' headmasters and the parents' councils).¹⁰² As of November 2021, the parliament has not concluded the legislative process concerning the bill.

As suggested by the media, the President's draft law was aimed at, among others, the "Rainbow Friday" initiative, launched by the Campaign Against Homophobia. The "Rainbow Friday" is an

99 Bychawska-Siniarska D., Godzisz P., Warso Z., [Information on the recent challenges faced by human rights defenders and civil society in Poland](#), Helsinki Foundation for Human Rights,

100 Paweł Kościński, [Akcja Demokracja broniła sądów. Teraz atakuje ją TVP, a poseł PiS donosi do prokuratury](#), Wyborcza.pl

101 Wp.pl, [MSWiA chciało „przejąć” fundację Obywateli RP. Sąd nie pozwolił](#)

102 Poland, Sejm, [Przedstawiony przez Prezydenta Rzeczypospolitej Polskiej projekt ustawy o zmianie ustawy - Prawo oświatowe](#) (parliamentary print no. 458), 3 July 2020.

annual event organised in schools that promotes tolerance and acceptance of LGBT+ persons. The initiative is strongly criticised by conservative and far-right organisations; in 2019, a conservative NGO sent a freedom of information request to schools, asking whether they plan to participate in the initiative and arousing the chilling effect among school authorities.¹⁰³

Moreover, five local governments that adopted the Local Government Charter of Family Rights sued a group of activists who publicised, also on the international arena, the problem of local governments adopting resolutions targeting LGBT+ persons.¹⁰⁴ The group of activists runs an online “Atlas of Hate”, which is successively updated with local government units adopting such resolutions or the Local Government Charter of Family Rights.

As a part of the protest against these resolutions, B. Staszewski, an LGBT activist, runs a photographic project within which he travels to places that have adopted the resolutions and hangs a sign “LGBT-free zone” along roads leading into them. He then takes photographs of members of local LGBT+ communities and removes the sign. With regard to his activities, B. Staszewski faced numerous legal actions that could be classified as SLAPPs. For example, in 2020 two MPs from the ruling majority notified the prosecution about his performances and requested that the case be investigated¹⁰⁵. Furthermore, a conservative NGO submitted another request with regard to B. Staszewski to the police, however, they refused to launch the investigation¹⁰⁶.

103 M. Glanc, [Środowiska prawicowe atakują Tęczowy Piątek. Po groźbach jedna szkoła musiała się wycofać](#), Onet.pl

104 A. Pitoń, [Twórcy Atlasu Nienawiści: Nie mamy za co przeproszać](#), Wyborcza.pl

105 J. Bretan, [Activist signposts Polish towns as “LGBT-free zones” in protest against anti-LGBT resolutions](#), Notes from Poland

106 Ordo Iuris, [Kolejna krzywdząca akcja Bartosza Staszewskiego. Ordo Iuris w obronie prorodzinnych samorządów](#)

4. List of reports documenting the situation in Poland (selected examples)

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- Helsinki Foundation for Human Rights, [A tool of the government. The functioning of the Polish Constitutional Court in 2016-2021](#)
- Helsinki Foundation for Human Rights, [Ruled by law. Threats to the protection of human rights in Poland in 2015-2019](#)
- Helsinki Foundation for Human Rights, [It starts with the personnel](#)
- Helsinki Foundation for Human Rights, [Time of trial. How do changes in justice system affect Polish judges?](#)
- Committee of Judiciary Defense, [Państwo, które karze czyli naciski i represje wobec polskich sędziów i prokuratorów](#)
- Amnesty International, [Free courts, free people, judges standing for their independence](#)
- Human Rights Watch, [“The Breath of the Government on My Back” Attacks on Women’s Rights in Poland](#)

Venice Commission’s opinions

- Poland - [Urgent Joint 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](#), issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure on 16 January 2020, endorsed by the Venice Commission on 18 June by a written procedure replacing the 123rd Plenary Session
- 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) CDL-
- 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).
- Poland - [Opinion on the Act on the Constitutional Tribunal](#), adopted by the Venice Commission at its 108th Plenary Session, (Venice, 14-15 October 2016)
- 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) CDL-AD(2016)012 French 13/06/2016 - 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)

ODIHR's opinions

- Poland: [Urgent Opinion on the Impact of Legislative Acts Introducing a State of Emergency on the Mandate of the Commissioner for Human Rights](#)
- Poland: [Urgent Opinion on Draft Amendments to the Aliens Act, and the Act on Granting Protection to Aliens on the Territory of the Republic of Poland](#)
- [Opinion on the Draft Act On Special Rules for the Organisation of the General Election of the President of the Republic of Poland Ordered in 2020 with the Possibility of Postal Voting](#) (Senate Paper No. 118)
- [Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland](#) (as of 20 December 2019)
- [Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland](#) (as of 26 September 2017)
- [Opinion on the Draft Act of Poland on the National Freedom Institute - Centre for the Development of Civil Society](#)
- [OSCE/ODIHR Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain Other Acts of Poland](#)



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