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POLAND 2016/2017

The government undertook significant legal reforms, in particular concerning the Constitutional Tribunal. There were 214 legislative amendments and laws enacted since the Law and Justice party came to power in October 2015. The speed of the legal reforms and the lack of adequate consultation with civil society were widely criticized.

Legal, constitutional or institutional developments

Several amendments to the Law on the Constitutional Tribunal deepened the constitutional crisis that started in 2015; they were considered wholly or partially unconstitutional, according to the Constitutional Tribunal's rulings in March and August.

In January, the European Commission initiated for the first time a structured dialogue with Poland under the Rule of Law Framework giving it until 27 October 2016 to outline steps taken to remedy the crisis. Poland responded that it would not implement the recommendations and that they were "based on incorrect assumptions".

The judges elected by the previous Parliament were not appointed and the Prime Minister refused to publish several of the Tribunal's judgments. A July amendment to the Law on the Constitutional Tribunal introduced a requirement to examine cases in sequence of registration, depriving the Tribunal of its case prioritization competence.

In November, the UN Human Rights Committee issued its concluding observations on Poland; the Committee recommended, among other issues, that Poland ensure respect for and protection

of the integrity and independence of the Tribunal and its judges and that it ensure implementation and publication of all the Tribunal judgments.¹

Following the adoption of three new laws regarding the Constitutional Tribunal and the appointment of a new Tribunal President, the European Commission raised new concerns and issued a complementary Recommendation in December, giving Poland two months to address the systemic threat to the rule of law in the country.

Justice system

Under the new Law on Prosecution enacted in January, the functions of Prosecutor General and Minister of Justice were merged and the Prosecutor General's powers broadened. These reforms had significant implications for the right to a fair trial and the independence of the judiciary.²

In June, President Duda refused to appoint nine judges nominated for promotion to higher instance courts and one judge nominated for office by the National Council of the Judiciary. No reason was given for the President's decision.

Counter-terrorism and security

In June, a new Counter-terrorism Law was enacted, following a fast-track legislative process. It consolidated extensive powers in the hands of the Internal Security Agency with no independent oversight mechanism to prevent abuse and ensure accountability.

Terrorism-related crimes and "incidents" were broadly defined in the law and the accompanying regulation. Foreign nationals were particularly targeted in the new law, which allowed for their covert surveillance, including through wire-tapping, monitoring of electronic communications, telecommunication networks, and devices without judicial oversight for three months, after which the surveillance may be extended by a court order. These measures could be employed if there was a "fear", rather than a reasonable suspicion, that the person may be involved in terrorism-related activities. The Counter-terrorism Law introduced several other provisions, such as admissibility of illegally obtained evidence, extension of pre-charge detention to 14 days, and the removal of certain safeguards around permissible use of lethal force in the context of counter-terrorism operations.

Under the amended Police Act, surveillance powers were expanded allowing courts to authorize secret surveillance for three months – to be extended to a maximum of 18 months – on the basis of a broad list of crimes and without a requirement to consider proportionality. The amendments also allowed for metadata to be accessed directly by the police without a court order. Confidentiality of information covered by professional privilege, for example, available to criminal defence solicitors, was also compromised as surveillance of lawyers' communications was not prohibited.³

The UN Human Rights Committee recommended, among other issues, that Poland ensured the Penal Code defined terrorism-related crimes in terms of purpose, narrowly defined their nature and that it provided a precise definition of “terrorist incidents”.

The criminal investigation into Poland’s co-operation with the CIA and the hosting of a secret detention site was still pending. The 2015 European Court of Human Rights (ECtHR) judgments in the cases of al-Nashiri and Abu Zubaydah were not fully implemented.

Freedom of expression – journalists

In July, the National Media Council became operational; it appointed and recalled management and supervisory boards of public media organizations. Its composition and the rules of voting allowed the ruling party to control the Council’s decisions.

The government’s effective control over public media and the resulting restrictions on the freedom of the press resulted in Poland’s drop in the 2016 World Press Freedom Index from place 18 down to 47, out of 180 countries. By the end of the year, 216 journalists and administrative staff in public media organizations were dismissed, forced to resign or transferred to less influential positions, according to the association Society of Journalists. In December, a proposal of the Marshal of the *Sejm* (lower house of the Parliament) to severely restrict journalists’ access to the Parliament sparked mass protests and a parliamentary crisis, with opposition MPs “occupying” the podium.

Freedom of assembly

In December, the Parliament passed a restrictive amendment to the Law on Assemblies, despite negative opinions of the Polish Human Rights Commissioner and the Supreme Court and strong criticism from nearly 200 NGOs. The President did not sign the amendment, referring it to the Constitutional Tribunal instead.

Discrimination

Serious gaps remained in the law regarding discrimination and hate crimes related to age, disability, gender, gender identity and expression, sexual orientation and social or economic status. In April, the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was abolished.

Refugees’ and migrants’ rights

Poland did not accept any refugees from other EU member states under the mandatory relocation quota. The authorities continued to use detention disproportionately for migrants and asylum-seekers.

Civil society organizations reported there were barriers to accessing the asylum procedure, including numerous cases where people were unable to apply for international protection at the Brest/Terespol border crossing between Belarus and Poland. In June, the ECtHR communicated the cases *A.B. v Poland* and *T.K. and S.B. v Poland* to the government. They concerned a family of three Russian citizens who tried unsuccessfully to enter Poland and lodge asylum claims at the Brest/Terespol border four times.

Sexual and reproductive rights

Women continued to face systemic difficulties in accessing safe and legal abortion; a petition proposing to further restrict their access was considered before Parliament at the end of the year.

After mass protests and a general women's strike on 3 October, Parliament rejected a bill which proposed a near total ban on abortion and criminalization of women and girls who obtained an abortion and anyone assisting or encouraging them to have an abortion.⁴

1. Poland: Submission to the United Nations Human Rights Committee. 118th session, 17 October - 04 November 2016 ([EUR 37/4849/2016](#))
2. Poland: Dismantling rule of law? Amnesty International submission for the UN Universal Periodic Review – 27th session of the UPR working group, April/May 2017 ([EUR 37/5069/2016](#))
3. Poland: New surveillance law a major blow to human rights ([EUR 37/3357/2016](#))
4. Poland: Women force historic U-turn on proposed abortion ban ([News story](#), 6 October); A dangerous backward step for women and girls in Poland ([News story](#), 19 September)

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