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### Poland 2020

The authorities continued to erode the independence of the judiciary. COVID-19 measures served as a pretext to crackdown on peaceful protesters and to restrict access to asylum. Criminal charges were used to curtail freedom of expression. LGBTI rights remained under attack. Authorities attempted to further restrict access to abortion.

#### Background

Due to the COVID-19 pandemic, the May Presidential election was postponed until July and partially held by postal vote. In response to the pandemic, in March, the government introduced a total ban on public assemblies; in May, assemblies of up to 150 people were permitted; in October, only up to 10 or 25 people were allowed to assemble, depending on zones. Legislation intended to support businesses and workers affected by the pandemic included amendments on unrelated matters. This included enhanced penalties for illegal abortion and for insulting the President.

#### State overreach – independence of the judiciary

The government continued to implement legal and policy changes that undermined the independence of the judiciary.

Parliament adopted a new law in January imposing severe restrictions on judges' rights to freedom of expression and association.<sup>1</sup> The law prohibits judges from questioning the credentials of judges appointed by the President. The state's Deputy Disciplinary Commissioner sought to initiate disciplinary proceedings in August against 1,278 judges who had asked the OSCE to monitor the presidential election.

International scrutiny also continued. A number of cases against Poland regarding attacks on the judiciary were pending before the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). In September, the European Parliament adopted a resolution expressing concerns regarding the independence of the judiciary and threats to human rights in Poland.

In April, the CJEU issued an order for interim measures requiring the government to immediately suspend its new system of disciplinary proceedings against judges. The authorities, however, continued to refuse to implement this ruling and the Supreme Court carried on examining such disciplinary cases. The Deputy Minister of Justice stated that the CJEU had violated Poland's sovereignty by intervening in its domestic affairs.

In September, the ECtHR formally requested a response in the case of judge Igor Tuleya who was challenging disciplinary proceedings against him as violations of his rights to private life and freedom of expression. The Disciplinary Prosecutor initiated the proceedings against Igor Tuleya in 2018. He had, among other things, submitted a request for a preliminary ruling from the CJEU on whether the new national legislation that undermined the independence of the judiciary was compatible with EU law.

#### Freedom of assembly

Peaceful anti-government protesters continued to face fines and detention, amidst COVID-19 measures used to crack down on some protests beyond what was necessary to protect public health.<sup>2</sup>

In May, during the electoral campaign, police arrested hundreds of peaceful protesters simply for protesting in the streets and imposed heavy fines. The police especially targeted with fines protesters demanding respect for the independence of the judiciary and those criticizing the lack of support for small companies during the COVID-19 lockdown. The authorities imposed fines against peaceful protesters outside the Trójka state radio station who were opposing censorship of a song.

#### Freedom of expression and association

Two activists were charged in June with “theft and burglary” for replacing advertisements on bus shelters with posters that accused the government of manipulating COVID-19 statistics.<sup>3</sup> They faced up to 10 years in prison, with the case pending at year's end.

In July, human rights defender Elżbieta Podleśna was indicted for “offending religious beliefs” for allegedly possessing and distributing posters and stickers depicting the Virgin Mary with a rainbow halo.

The Minister of Justice and Minister of Environment proposed a law in August requiring NGOs to declare any sources of foreign funding and to publish them in a public register.

## Rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people

Widespread anti-LGBTI rhetoric from politicians persisted.

In July, the President signed an anti-LGBTI rights pamphlet before the election called the “Family Charter”, which pledged to ban marriage equality, adoption of children by LGBTI people and LGBTI education in schools.

Police arrested 48 LGBTI activists in August during a peaceful protest against a prominent activist’s pre-trial detention. They faced charges for “participation in an illegal gathering”. The investigation was continuing at year’s end.

Since March 2019, about 100 local authorities had adopted discriminatory anti-LGBTI resolutions, including resolutions explicitly “against LGBTI ideology”; some refer to “traditional values” or “family rights”. In July, the European Commission rejected six town-twinning applications because local authorities had declared so-called LGBTI-free zones or had adopted “family rights” resolutions. In September, the head of the European Commission stated that so-called LGBTI-free zones were in fact “humanity-free zones” that had no place within the European Union.

According to a report published in May by the EU Agency for Fundamental Rights, 15% of LGBTI people in Poland had experienced a physical attack or sexual violence in the last five years. This was the highest rate in the EU. Most reported attacks on LGBTI people resulted in no prosecution.<sup>4</sup>

## Sexual and reproductive rights

Sexual and reproductive rights remained under attack.

A parliamentary debate was scheduled for April to address two “citizens’ initiatives” that would set criminal penalties for sex education in schools and would further restrict access to abortion.<sup>5</sup> Large protests took place, held virtually or while respecting physical distancing owing to COVID-19. Members of Parliament voted to send the bills to parliamentary committees, postponing the debates.

In July, the Ministry of Justice announced a plan to withdraw from the Istanbul Convention, an international treaty on violence against women. The government openly lobbied other countries to withdraw as well. The Prime Minister announced a plan to have the Constitutional Court examine the Convention’s compatibility with the Polish Constitution, claiming that the Convention was “harmful” because it “contains elements of an ideological nature”.

In October, the Polish Constitutional Tribunal ruled that access to abortion on the ground of “severe and irreversible foetal defect or incurable illness that threatens the foetus’ life” are unconstitutional. The Constitutional Tribunal’s ruling will mean an almost total ban on abortion in the country.

## Rights of refugees and asylum-seekers

In April, the CJEU ruled that Poland had failed to fulfil its obligations under EU law by refusing to relocate asylum-seekers under the EU relocation scheme.

The ECtHR ruled against Poland in July concluding that the situation at border crossing points amounted to inhuman or degrading treatment because the authorities refused to receive asylum applications and conducted summary removals that put some people at risk of being forcibly transferred to a place where they are at risk of serious human rights violations (*refoulement*).

Due to the COVID-19 pandemic, the Office for Foreigners suspended direct customer services and there were some limitations on the submission of asylum applications at border crossings.

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1. [Poland: Judges and lawyers from across Europe protest judicial takeover in Warsaw \(News story, 9 January\)](#)
  2. [Poland: COVID-19 is no excuse to crack down on protests \(EUR 37/2421/2020\)](#)
  3. [Poland: Activists at risk of 10-year jail term for COVID-19 poster campaign challenging government statistics \(News story, 11 June\)](#)
  4. [Polki i Polacy chcą, by przestępstwa motywowane homofobia i transfobia były rozpoznawane przez państwo \(in Polish only, translates as ‘Polish people want crimes motivated by homophobia and transphobia to be recognized by the state’\) \(News story, 24 September\)](#)

5. [Poland: Abortion ban and regressive sexuality education laws must not be rushed through under cover of COVID-19 \(News story, 14 April\)](#)

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