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## Annual Report 2019 - Poland [EUR 01/2098/2020]

The government continued to implement legal and policy changes that undermined the independence of the judiciary. Dozens of judges who spoke out against those changes faced disciplinary proceedings. The courts continued to uphold the rights of peaceful protesters, including those who engaged in civil disobedience.

### Background

Throughout the year, leading public figures, including politicians and media officials, frequently made discriminatory statements targeting minorities, including LGBTI people and Jews. In September, the Committee on the Elimination of Racial Discrimination (CERD) called on the government to take measures to end extreme poverty among Roma, and to end forced evictions of Roma and housing demolitions.

In January, a man fatally stabbed the Mayor of Gdańsk, Paweł Adamowicz, during an annual charity event. The mayor was known for his support of LGBTI rights and openness towards refugees and migrants.

The Human Rights Commissioner, Adam Bodnar, was targeted by officials and state media several times during the year. In February, state TV took legal action against him demanding an apology after he stated that they had been engaged in possible hate speech against the Mayor of Gdańsk. In May, the court upheld his right to criticize the TV channel.

The governing Law and Justice party, which has implemented the changes undermining the independence of the judiciary and whose members have been increasingly using rhetoric targeting minorities, won parliamentary elections in October, retaining its majority in the lower chamber (Sejm) but losing to the opposition in the Senate.

### Justice System

In April, the European Commission (EC) started an infringement procedure against Poland over the legislation on disciplinary proceedings against judges. In October, the EC concluded that the government's response to its concerns that the new disciplinary regime undermines the independence of judges, was unsatisfactory. It referred the case to the European Court of Justice (ECJ).

In June, the ECJ ruled that the Law on the Supreme Court, which attempted to oust one third of the court's judges, was in breach of EU law. An interim decision from the ECJ from December 2018 had already ordered the Polish authorities to restore the Supreme Court to its composition before the law came into force.

Also in June, the Parliament adopted an amendment to the Criminal Code. It introduced among other things the penalty of life imprisonment without possibility of parole, contravening international human rights obligations. After widespread concerns voiced by experts in criminal law, the President referred the amendment to the Constitutional Tribunal for review, which was pending at year's end.

On 5 November, the ECJ ruled that the law, which lowered the retirement age of judges and set a different retirement age depending on gender, was in breach of EU law. In a separate case on 19 November, the ECJ ruled that the new Disciplinary Chamber of the Supreme Court, whose members were elected by the new judicial council, must meet the requirement of independence and impartiality. The ECJ clarified that it is up to the Supreme Court to make an assessment whether this requirement has been met. On 5 December, the Supreme Court ruled that the new National Council of the Judiciary was appointed in a manner that does not guarantee its independence. On 20 December, the lower chamber of the Parliament adopted another amendment further undermining judicial independence.

Two cases were communicated by the European Court of Human Rights to the Polish government for response. In these cases, judges argued a breach of their right to a fair hearing in the context of the reform of the judiciary.

Judges and prosecutors who spoke out in defence of an independent judiciary continued to face politicized disciplinary proceedings.

An intensive smear campaign continued throughout the year against judges defending the rule of law by state media and on social media. In August, media revealed links between the campaign that involved personal attacks on judges, and high-ranking officials at the Ministry of Justice. Following these revelations, the deputy Minister of Justice Łukasz Piebiak resigned in August.

## Freedom of Assembly

Dozens of peaceful anti-government and anti-nationalism protesters continued to face criminal or administrative charges. In the majority of cases, the courts upheld the rights of the protesters to freedom of expression and peaceful assembly. The courts dropped charges against protesters who, among others, climbed through metal barriers that the police used to prevent them accessing the area around parliament in 2017. In a small number of cases, individuals were fined for holding a protest under the legislation which gives so-called “cyclical assemblies” priority over attempts to hold counter- or spontaneous demonstrations.

In February, a Warsaw judge ordered the re-opening of an investigation into the case of 14 women who alleged they had been verbally and physically attacked when they unfurled a banner saying “Fascism Stop” during the Independence Day march in Warsaw in November 2017. The women had challenged the prosecutor’s 2018 decision to drop the case. In separate proceedings, they appealed against the fines the courts had given them for “interfering with a lawful assembly”. On 24 October, a district court in Warsaw quashed all charges against them, stating that they had the right to protest peacefully and express their views against fascism. On 20 December, the prosecutor for the second time decided to close the investigation into the women’s complaint. Just like in her 2018 decision, she argued that there was no “public interest” to justify public prosecution into the case.

## Freedom of Expression

In May, activist Elżbieta Podleśna was arrested and detained for several hours on suspicion of “offending religious beliefs” – a charge carrying up to two years’ imprisonment – after police claimed that they had found copies of posters depicting the Virgin Mary with her halo in the rainbow colours of the LGBTQ flag. The image had been posted around the town of Płock the previous month. The case was pending at the end of the year.

## Rights of Lesbian, Gay, Bisexual, Transgender and Intersex People

The newspaper *Gazeta Polska* was forced by the Regional Court in Warsaw to end its campaign of distributing “LGBT-free zone” stickers after one of the organizers of Lublin’s LGBTI pride march won his complaint on grounds that the stickers were an affront to human dignity. Up to 64 local councils across Poland adopted resolutions declaring their opposition to “LGBT ideology” in “defence of families [or] the rights of Catholics”.

In July, amid widespread anti-LGBTI rhetoric from politicians and the media, the first LGBTI pride march took place in the town of Białystok. According to police estimates, around 1,000 participants were attacked by roughly 4,000 counter-protesters who threw fire crackers, cobblestones and eggs, shouted insults and physically assaulted some of the marchers. There were concerns over the adequacy of the police protection of the participants and the lack of safe access to the beginning of the march.

## Counter-terror and security

In May, the Supreme Administrative Court dismissed a complaint of the Helsinki Foundation for Human Rights against the use of classified information in cases of deportation, including of asylum-seekers. The court held that authorities have the right to refuse granting access to information on which the decision is based, if state security is at stake. The case raises concerns over the right to due process in cases of deportations where national security grounds are invoked.

The criminal investigation into Poland's co-operation with the CIA and the hosting of a secret detention site was still pending. The 2015 ECtHR judgments in the cases of al-Nashiri and Abu Zubaydah were not fully implemented. In June, the Committee of Ministers of the Council of Europe noted a lack of tangible progress in the domestic investigation into the serious human rights violations, including torture and unacknowledged detention.

## Refugees and asylum-seekers

Concerns over push-backs of asylum-seekers at the border crossing with Belarus continued. In September, the CERD expressed concerns over reports that asylum-seekers have been denied entry to Poland or denied access to asylum procedures by border guards.

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**Austrian Red Cross**

Austrian Centre for Country of Origin and Asylum Research  
and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien

T (Telefon) +43 1 589 00 583

F (Fax) +43 1 589 00 589

info@ecoi.net

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