

# HELSINKI FOUNDATION FOR HUMAN RIGHTS

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Country covered: Poland

Helsinki Foundation for Human Rights Statement

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*Check against delivery*

Mr/Madam Chair,

Honorable delegates,

Ladies and gentleman,

On behalf of Helsinki Foundation for Human Rights, one of the oldest and biggest human rights organization in Poland, I would like to present our concerns regarding rule of law crisis in Poland and its impact on the fundamental rights protection.

In my presentation today, I would like to focus on three key points: rule of law crisis in Poland and its impact on judiciary system, freedom of assemblies and women's reproductive rights.

The rule of law crisis in Poland has been lasting since 2015. In last seven years, the governing majority adopted almost 30 different pieces of legislation that undermine the independence of courts and widen the political control over judges.

The adopted changes widen the political control over courts, undermine the legal stability and deeply influenced the effectiveness of judiciary system works.

When it comes to widening the political control over courts, the problem has two aspects. First, the governing majority due to the numerous legal changes gained extensive control over nominating judges to both top rank courts (such as the Supreme Court and the Constitutional

Tribunal – the last one was also packed with illegally appointed judges) as well as common courts. Top rank courts judges, appointed often in highly politicized procedures, adjudicating in cases pose a serious threat to an applicant right to a fair trial before a court established by law.

The second element of widening political influence over courts concerns the disciplinary procedures against judges. Since 2019, the politically appointed disciplinary commissioners launched over 150 proceedings against judges – the majority of these proceedings concerns either the content of judicial decisions or judges' public statements in defense of the rule of law.

In last five years, both the European Court of Human Rights, the Court of Justice of the European Union and the national courts issued several key decisions pointing out the deficiencies of the changes in the judiciary system and their influence of judges' independence. None of these decisions, however, have been fully implemented by the government. What is more, as of 2021, the government is using a new method which is challenging the decisions of the international tribunals before the Constitutional Tribunal. Although the Polish Tribunal does not have the authority to assess these decisions, still its judgements are used by the government to avoid fulfilling its duties as both member of the Council of Europe and the European Union.

The changes in the judiciary system have been focused on the political control over the system rather than improving the access to justice. As the result, in last seven years the effectiveness of the judiciary system has been severely undermined. For example, in 2011 the average length of the proceedings before the Polish courts was 4 months whereas in 2019 it was 10 months.

Finally, all these changes have led to undermining the courts' independence. Currently, there are no effective guarantees protecting judges independence. Judges' independence depends only on their professional knowledge, moral integrity and most of all their courage.

The rule of law crisis has deeply influenced the protection of all fundamental rights and freedoms. Without an effective court control or in the face of lack of fair trial before court established by law, civil society activists and human rights defenders face greater risks.

In particular, this is visible in the field of freedom of assemblies. Since 2017, due to legal changes and courts' decisions the freedom of assemblies have been limited in a way that prioritize the government sponsored assemblies. Furthermore, the freedom of assembly was restricted by the regulations adopted to prevent the spread of COVID-19 pandemic, regardless the significant doubts regarding the constitutionality of the legislation.

Also, the treatment of the protesters remains one of the key human rights concerns. For example, in October and November 2020, during the peak of anti-abortion ban protests civil society organizations and media reported on numerous cases of use of excessive force of the Police towards the protesters.

Finally, in last several years we have also observed a significant deterioration of women's rights protection. On 22 October 2020, the Constitutional Tribunal declared the provision enabling the termination of pregnancy in cases of severe fetal defects or an incurable ailment threatening the fetus's life unconstitutional, making access to abortion almost impossible in

practice. Due to this decision number of legal abortions in Poland dropped significantly. The decision also created a chilling effect among doctors to perform legal abortions in order to save mother's life – in last two years, media reported on at least two cases of pregnant women whose deaths were most probably related to the abortion ban.

Bearing in mind the scope and scale of the rule of law crisis in Poland and its impact on the fundamental rights protection, I believe that the Polish government should be recommended to:

- 1) Cease all legal and policy changes influencing the independence of judges (including politicized disciplinary proceedings against judges) and fully implement the decisions of the international tribunals;
- 2) Improve the legislation on freedom of assemblies by abolishing the provisions on cyclical assemblies and improve the Police code of conduct in treating the peaceful protesters;
- 3) Introduce an effective procedure to ensure that women have an opportunity to exercise the right to lawful abortion. Such procedure should guarantee that women will receive reliable and objective information on the grounds for the lawful termination of pregnancy and the condition of the fetus.