



“REFORM” OF THE JUDICIARY IN POLAND POSES RISK TO THE RIGHT TO FAIR TRIAL

BRIEFING BY AMNESTY INTERNATIONAL AHEAD OF THE GENERAL
AFFAIRS COUNCIL MEETING, MARCH 2018

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1. INTRODUCTION

This briefing provides specific examples that illustrate the negative impact on the rule of law and human rights in Poland as a result of the government's "reform" of the judiciary adopted in the period between July and December 2017. Amnesty International concludes that there is a "clear risk of a serious breach" by the Polish government of the values protected by Article 2 TEU,¹ and that Poland is already in breach of its international obligations to uphold the rule of law and protect human rights.

As a result of a set of legislative changes adopted in 2017, the Polish government has empowered itself to exercise control over the judiciary, which puts at risk the right to fair trial. In this briefing, Amnesty International highlights examples where there are concerns that the executive has exerted such control. It highlights the case of the District Court of Suwalki, where judges were put under pressure following repeated decisions in favor of the rights of anti-government protesters. Amnesty International has also obtained testimonies from judges who reported being subjected to disciplinary proceedings, or who feared a risk thereof for their decisions in cases involving governing-party politicians or for their participation in protests demanding the independence of the judiciary.

Concerns over the lack of institutional independence of the judiciary in Poland have been expressed by a number of judges, lawyers, prosecutors, and international and domestic NGOs and experts. One Warsaw barrister told Amnesty International: "From a systemic point of view, we no longer have independent courts. It is all a matter of individual judges who must now be brave enough to exercise their independence from the political power".² A criminal lawyer, Katarzyna Gajowniczek- Pruszyńska, stated: "We are expecting times that will test the character. More and more judges refer in their decisions to the Constitution and international human rights law."³ And Mikołaj Pietrzak, Dean of the Warsaw Bar Association, has commented that: "They don't have a sense of security. Pursuant to the changes in the National Council of the Judiciary, replacements of the presidents of courts, the judges know that if they are going to make decisions not favorable to the wishes of the prosecutor, they are in trouble".⁴

2. INTERFERENCE WITH THE INDEPENDENCE OF JUDICIARY

In July 2017, the President of Poland signed an amendment to the Law on Common Courts. The amendment entered into force in August 2017 and empowered the Minister of Justice to appoint and dismiss presidents and vice-presidents of courts. Within the first six months of the law entering into force, the Minister had the power to replace the presidents or vice-presidents without any justification. Using this power, the Minister dismissed a number of presidents and vice-presidents, and subsequently appointed 66 new presidents and 63 new vice-presidents of common courts between August 2017 and early February 2018.⁵ There are 377 courts in Poland⁶ and the government itself has acknowledged that the Minister has replaced about 18% of presidents and vice-presidents of the courts.⁷

In some cases, these dismissals were met with disagreement from the judges in the affected courts. For example, the Assembly of Judges of Warsaw Regional Court called the dismissals, which were carried out without consultation with judicial self-governing bodies, an "action, which interferes with the independence of courts".⁸ The biggest Association of Judges in Poland, Iustitia, called the changes in the various Warsaw courts "mass dismissals".⁹ The dismissals and new appointments in the District Court Warsaw-Centre raised particular concerns because this court deals with a large volume of cases concerning persons who publicly,

¹ Article 2 of the Treaty on European Union provides that: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

² Interview with Amnesty International, 20 February 2018, Warsaw. The name is on files of Amnesty International.

³ Interview with Amnesty International, 21 February 2018, Warsaw.

⁴ Interview with Amnesty International, 29 January 2018, Warsaw.

⁵ <http://www.iustitia.pl/informacja-publiczna/2100-ostatecznie-130-prezesow-i-wiceprezesow-zostalo-odwolanych-przez-ministra-sprawiedliwosci>

⁶ <http://sonar.wyborcza.pl/sonar/7,156422,22492032,sonarwsadach-pis-poprawia-ustawy-ziobro-powoluje-prezesow.html>

⁷ Executive summary of the government's White Paper on the Reform of the Polish Judiciary, March 2018, p. 5:

https://www.premier.gov.pl/files/files/white_paper_en_-_executive_summary.pdf

⁸ <http://www.iustitia.pl/uchwaly/2122-uchwala-nr-3-zgromadzenia-przedstawicieli-sedziow-okregu-sadu-okregowego-w-warszawie>

⁹ <http://www.iustitia.pl/informacje/2099-czystki-kadrowe-w-sadzie-rejonowym-dla-m-stolecznego-warszawa>

peacefully protested against the judicial reforms and were charged either under the Code of Petty Offences or the Criminal Code.¹⁰

Following large protests against the crackdown on the independence of the judiciary, Amnesty International interviewed several judges who had been subjected to disciplinary proceedings or other forms of pressure after they adjudicated cases related to the protests and/or after they took a stand against the government's reforms.

JUDGE TULEYA

Igor Tuleya from the Regional Court in Warsaw is one of the judges who actively participated in protests in July 2017 against the government's crackdown on the independence of the judiciary. "A judge must act within the remits of the law, [s]he mustn't rise to barricades but must defend the [basic] values," he told the media.¹¹

In December 2017, Judge Tuleya upheld the complaint of four opposition MPs against the decision of the Regional Prosecutor in Warsaw to discontinue the investigation regarding a particular Parliamentary session in December 2016. During that session, the MPs alleged that the Speaker prevented them from participating in the discussion before a vote on the budget. The session took place during a politically tense period when protests had been held inside and outside the Sejm over attempts to restrict the access of media to Parliament.¹² During the protests, opposition MPs intentionally deviated from the issues under debate and shouted from their benches and otherwise interrupted the session, which resulted in the decision of the Speaker of Sejm (the lower chamber of the Parliament) to exclude one of the MPs from the session and to move the session from the plenary to another room. The opposition MPs argued irregularities in the decision of the Speaker. On 18 December 2017, in his ruling into the MPs' court case, Judge Tuleya held that:

1. The prosecutor needs to continue the investigation into the complaint of the MPs as their rights to perform their duties as deputies were breached by the Speaker;
2. The Speaker's decision to exclude the MP who was shouting and deviating in his intervention was not lawful under Polish law. In addition, it also interfered with the freedom of expression under the European Convention on Human Rights.¹³

In January 2018 shortly after Tuleya's decision, the vice-president of the Regional Court in Warsaw accused him of revealing classified information in his ruling on the MPs' complaint. The new president of the Regional Court in Warsaw¹⁴ informed the Assembly of the Regional Court Warsaw on 26 January that the prosecutor had initiated criminal proceedings in the matter. At the time of writing, said proceedings were in the preparatory stages.¹⁵

Judge Tuleya has argued that the materials he referred to in his decision were publicly available.¹⁶ He has stated that he fears that once the new disciplinary chamber of the Supreme Court is established by the Senate in April 2018, the complaint against his decision regarding the December 2016 Parliamentary session will be opened – and could result in disciplinary measures being applied to him simply for a decision that was not favorable for the government. Some of the government party politicians have declared that Tuleya is not suitable for the position of a judge.¹⁷

¹⁰ <https://oko.press/ziobro-zmienil-prezesa-sadu-warszawie-dotychczas-sad-uniewinnial-demonstrantow-antyrzadowych/>

¹¹ Interview by Gazeta Wyborcza, 17 February 2018 (in Polish) <http://wyborcza.pl/magazyn/7,124059,23029890,igor-tuleya-nie-mam-planu-b.html>

¹² Information about Tuleya's decision from December 2017 (in Polish): <https://www.tvn24.pl/wiadomosci-z-kraju,3/sad-uchyla-decyzje-prokuratury-w-sprawie-obrad-w-sali-kolumnowej,799622.html>

¹³ Link to the decision from 18 December 2018 (in Polish): <http://n-6-1.dcs.redcdn.pl/file/o2/tvn/web-content/m/p1/f/cd14821dab219ea06e2fd1a2df2e3582/d89a4961-1128-411a-bb8d-682818f56380.pdf>

¹⁴ Appointed by the Minister of Justice in September 2017: <https://wiadomosci.wp.pl/ziobro-zwolnil-trzy-wiceprezes-i-powolal-nowa-prezesa-sadu-okregowego-w-warszawie-rzeczniczka-sadu-dla-wp-zwolnienia-bez-zadnego-zarzutu-6165741645256833a>

¹⁵ Email communication with Judge Tuleya, 8 March 2018.

¹⁶ Interview with Amnesty International, 30 January 2018, Warsaw.

¹⁷ For example Krystyna Pawłowicz: <https://wiadomosci.wp.pl/krystyna-pawlowicz-na-fb-do-sedziego-igora-tulei-pan-nie-powinien-byc-sedzia-6087080985023617a>

Apparent political interference by the Minister of Justice and other governing party politicians also has been reported by a representative of the Association of Judges Iustitia, who told Amnesty International that the Minister “routinely comments on individual decisions in the media.”¹⁸

SUWALKI CASE

In January 2017, Judge Dominik Czeszkiewicz from the District Court in Suwalki in north-eastern Poland issued a decision that held that activists protesting against a candidate of the Law and Justice Party during a ceremony of an exhibition opening were *not guilty* of disturbing public order by “shouting, making noise or causing alarm”.¹⁹ Referring to, among other things, the European Convention on Human Rights, Judge Czeszkiewicz held that the protesters did not disrupt order but merely exercised their right to freedom of expression at a public event. The police appealed the decision. According to the media, on 25 March 2017, the deputy Minister of Justice met with Regional Court Judge Jacek Sowul, who was responsible for the appeal. On 6 April Judge Sowul overturned the *not guilty* verdicts and ordered a re-examination of the case.²⁰ The case was re-examined on 29 June 2017. Judge Piotr Taraszkiwicz of the District Court in Suwalki ruled again that the protesters were not guilty. The police appealed again. In October 2017, Judge Sowul was promoted to the position of the president of the Regional Court in Suwalki.²¹ On 26 October 2017 the Regional Court for the second time overturned the *not guilty* verdicts in the case of three protesters and ordered a re-examination. In the case of two protesters who did not speak during the ceremony and were merely present, the Regional Court upheld their not guilty verdicts. The hearing in the District Court with the three remaining protesters was scheduled for 19 February 2018 but was adjourned due to an anonymous complaint alleging possibly unlawful activities on the parts of some judges of the Regional Court.²²

The case and the decisions of the District Court in Suwalki were criticized by high-ranking politicians from the Law and Justice Party. In January 2018, the deputy Minister of Interior, Jarosław Zieliński, who was among the politicians who took part at the exhibition opening, stated in a radio interview that in his decision, Judge Czeszkiewicz “encouraged the breaches of the law”.²³

On 26 January 2018, the College of Judges of the Regional Court in Suwalki decided to open disciplinary proceedings against Judge Dominik Czeszkiewicz.

Judge Czeszkiewicz told Amnesty International: “After the [first *not guilty*] decision everybody was telling me to be careful. A few months ago, someone told me disciplinary proceedings against me have started. Now I know that they were simply waiting for me to make a mistake.”²⁴

On 17 January 2018, Judge Czeszkiewicz was assigned a criminal case involving a minor. He scheduled her interrogation for 26 January. The president of the Regional Court, Sowul, intervened claiming that the case was urgent and the minor should have been interrogated faster. Judge Czeszkiewicz faces disciplinary proceedings solely for the initial decision to schedule the interrogation for 26 January.²⁵ Judge Czeszkiewicz feels that the impartiality of the court’s work has been severely undermined: “In addition to this, the president of the Regional Court in Suwalki also ordered examination of six of my judgments. The case is now with the Advocate of the Regional Court (Rzecznik). I object to the impartiality of the proceedings as the Advocate is a close friend to the president of the court [who filed the complaint]... It feels that the decisions are made at the Regional Court and Appeal Court. We joke that before making a decision we should consult them.”²⁶ However, since the disciplinary proceedings may result in sanctions, including his removal from the post, Judge Czeszkiewicz says he is worried about his job and his future.

In December 2017, the Parliament adopted amendments to the Law on the National Council of Judiciary (NCJ)²⁷ and to the Law on the Supreme Court, which seriously undermine the independence of the

¹⁸ Interview with Judge Monika Frąckowiak, SSP Iustitia, 30 January 2018, Warsaw.

¹⁹ Article 51.1 of the Code of Petty Offences

²⁰ <https://oko.press/sad-suwalkach-odpuszcz-dzialaczom-kod-beda-sadzeni-trzeci/> or <https://www.tvn24.pl/wiadomosci-z-kraju,3/suwalki-sedzia-jacek-sowul-i-kulisy-wyroku-przeciwko-dzialaczom-kod,784627.html>

²¹ <https://bialystok.onet.pl/suwalki-nowy-prezes-sadu-okregowego-to-nominacja-polityczna/40b9cmh>

²² <https://koduj24.pl/suwalkscy-sedziowie-wykluczeni-z-procesu-dzialaczy-kod/>

²³ Radio 5 interview with Zieliński (in Polish) <https://radio5.com.pl/pierwszy-gosc-w-2018/>

²⁴ Interview with Amnesty International, 25 February 2018, Białymstok

²⁵ https://siecobywatelska.pl/wp-content/uploads/2018/02/A_2018_02_15_09_09_57_286.pdf

²⁶ Interview with Amnesty International, 25 February 2018, Białymstok

²⁷ Constitutional organ safeguarding independence of courts and judges.

judiciary. Both pieces of legislation subjected the judiciary to the political control of the government, and introduced new tools for the government to exert power over judges. On 15 January 2018, the president of the NCJ resigned in protest against the new legislation arguing that it was not compliant with Poland's Constitution.²⁸

The amendments provide Parliament with the power to appoint the 15 judges that comprise the NCJ. The Polish Constitution, however, expressly limits the number of the members of NCJ appointed by Parliament to six. On 5 March 2018, Parliament appointed the new NCJ members, 8 of whom happen to be the new presidents or vice-presidents of courts appointed since August 2017 by the Minister of Justice.²⁹

The Law on the Supreme Court will enter into force in April 2018. Among other things, it authorizes the new Extraordinary Chamber of the Supreme Court to reopen – within three years after its entry into force – all Supreme Court cases that became final after 17 October 1997 (Article 115.1).³⁰ This can be done without the knowledge or consent of the parties. In practice, this provision is likely to violate the principle of legal certainty. The Venice Commission has noted that this chamber “will be [also] entrusted with the examination of politically sensitive cases (electoral disputes, validation of elections and referendums, etc.), and will examine other disputes between citizens and the State”.³¹

The amendment of the Law on the Supreme Court also includes provisions that allow opening closed disciplinary proceedings against judges (Article 124.1). The amendment establishes the new Disciplinary Chamber whose members will be appointed – along with all the other new members of the Supreme Court – by the members of the Senate.³² The judges interviewed by Amnesty International feared that once the law enters into force in April 2018, there might be a series of disciplinary proceedings against certain judges.

JUDGE ŻUREK

Waldemar Żurek, is a judge of the Regional Court in Krakow, and the spokesperson for the National Council of the Judiciary (NCJ). Pursuant to the amendment of the Law on the NCJ, the mandate of the “old” NCJ terminated on 3 March 2018. Since late 2015, he has been one of the most vocal critics of the government's “reform” of the judiciary. For the past two years, various authorities have subjected Judge Żurek and his family members to several investigations and disciplinary proceedings. In February 2018, the Assembly of Judges of the Regional Court in Krakow adopted a resolution, in which they claimed that various actions by law enforcement agencies against Żurek were “repressive”.³³ There was a negative campaign in the public media against Żurek, which resulted in his receiving hate mail and text messages.³⁴ The Assembly of Judges has objected particularly to the investigation of Judge Żurek carried out by the Central Anticorruption Bureau (CBA).³⁵ It raised concerns over procedural irregularities in the investigation as it “has been pursued without a formal decision and without a proper announcement for a period of [the first] 6 months.”³⁶ In addition, the Assembly of Judges has noted with concern “unfounded intrusions of the [CBA] officials... to [houses of] several neighbours of judge Waldemar Żurek, as well as to a person who does and settles his taxes.”³⁷

The CBA interrogation was opened in 2016. It looked into Żurek's financial statements and eventually concluded in January 2018 that there were no major breaches of the law. However, at the time of writing, Judge Żurek had not received notice confirming the closure of the CBA proceedings against him.

On 17 January 2018, the new president of the Regional Court in Krakow removed Judge Żurek from his position as Speaker of the Court. The new president was appointed by the Minister of Justice in early January after the Minister dismissed the previous president over the phone while she was on leave.³⁸ The decision to dismiss Żurek led to protests by six out of eight judges of the College of the Court who

²⁸ <http://krs.pl/pl/aktualnosci/d.2018.1/5193.komunikat-rzeczniaka-prasowego-dotyczacy-rezygnacji-z-funkcji-przewodniczacego-krajowej-rady-sadownictwa-sedziego-sadu-najwyzszego-dariusza-zawistowskiego>. Accessed 5 February 2018.

²⁹ <http://wyborcza.pl/7,75398,23108831.krakowa-rada-ziobrownictwa-zobacz-kim-sa-nowi-sedziowie.html>

³⁰ Venice Commission, 11 December 2017. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e)

³¹ Venice Commission, 11 December 2017, p. 9

³² Article 61, paragraph 1 of the Law on the Supreme Court: http://orka.sejm.gov.pl/proc8.nsf/ustawy/2003_u.htm

³³ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018. On files of Amnesty International.

³⁴ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków. Interview with Amnesty International on 8 June 2017 and 29 January 2018.

³⁵ Acronym in Polish: Centralne Biuro Antykorupcyjne

³⁶ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków, pp. 1-2

³⁷ *Ibid*

³⁸ Interview with Judge Żurek on 29 January 2018, Warsaw.

saw the dismissal as irregular because the College did not vote on it, which is routine practice.³⁹ On 29 January 2018, those six members resigned from the College in protest against Żurek's removal from the position of Speaker.⁴⁰

Judge Żurek faced disciplinary proceedings in relation to his participation in July 2017 protests in defense of the independence of the judiciary. Supported by the Association of Judges, Iustitia, he delivered a speech at a protest on 16 July. Following the speech, a pro-government newspaper *Gazeta Polska* requested that the Appeal Court in Krakow initiate disciplinary proceedings against Judge Żurek. The Advocate (*Rzecznik*) of the Appeal Court responsible for the disciplinary proceedings held in August 2017 that there were no grounds on which to initiate disciplinary proceedings in this case.⁴¹

2. FREEDOM OF EXPRESSION: CRIMINALISATION OF SPEECH

On 6 February 2018, the President of Poland signed an amendment to the Law on the Institute of National Remembrance (INR), which makes it a crime to publicly claim that Poland had any responsibility for or complicity in the Holocaust. The President also referred the amendment (Article 55a) to the Constitutional Tribunal for it to review the amendment's compliance with Article 54 of the Constitution, which guarantees "the freedom to express opinions". Despite the referral,⁴² the law entered into force on 1 March 2018.⁴³

Under the amendment, any NGO or the Institute of National Remembrance may bring a civil complaint against anyone who damages "the reputation of the Republic of Poland" or the "Polish Nation" (Article 53o). Furthermore, "[w]hoever claims, publicly and contrary to the facts, that the Polish Nation or the Republic of Poland is responsible or co-responsible for Nazi crimes committed by the Third Reich... shall be liable to a fine or imprisonment for up to 3 years." (Article 55a1)

On 15 February 2018, the Speaker of the Senate called on Polish nationals living abroad to "document... all manifestations of anti-Polism... expressions and opinions that harm us. Notify our Embassies... of any slander affecting the good reputation of Poland."⁴⁴

Amnesty International considers that the amendment to the INR law infringes the right to freedom of expression as guaranteed by international human rights law binding on Poland. The right to freedom of expression can be restricted only in cases when it is necessary and proportionate, for the protection of the rights or reputations of others, or for the protection of national security, public order or public health or morals. Laws prohibiting insult or disrespect of public institutions or national symbols, or laws that are intended to protect the honour of the state are not permitted under international law and standards, and are contrary to the right to freedom of expression. Equally, laws that penalise the expression of opinions about historical facts are incompatible with states' obligations to respect freedom of opinion and expression.

The Holocaust law was used for the first time on 5 March 2018 when the Polish Anti-Defamation League (PDL), a nationalist organization close to Poland's government, filed a complaint against an Argentinian newspaper *Página 12*. The paper had used a 1950 photograph of anti-communist Polish fighters alongside an article about the pogrom in the town of Jedwabne where hundreds Jews were killed by their Polish neighbours during World War II. According to the PDL, this amounted to a "manipulation aiming to harm the Polish nation".⁴⁵

³⁹ <http://www.polsatnews.pl/wiadomosc/2018-01-30/sedziowie-opuszczaja-kolegium-sadu-okregowego-w-krakowie-powodem-odwolanie-waldemara-zurka-z-funkcji-rzecznika/>

⁴⁰ <http://www.iustitia.pl/informacje/2072-oswiadczenie-sedziow-o-rezygnacji-z-czlonkostwa-w-kolegium-sadu-okregowego-w-krakowie>

⁴¹ <http://www.rp.pl/Sedziowie-i-sady/308319942-Rzecznik-dyscyplinarny-brak-podstaw-do-postepowania-dyscyplinarnego-wobec-sedziego-Zurka.html>

⁴² Pending at the time of writing.

⁴³ <https://www.tvn24.pl/wiadomosci-z-kraju,3/nowelizacja-ustawy-o-ipn-weszla-w-zycie,818841.html>

⁴⁴ <https://www.senat.gov.pl/aktualnosci/art.10422.list-marszalka-senatu-do-polonii-i-polakow-za-granica-w-zwiazku-z-ustawa-o-ipn.html>

⁴⁵ <http://rdi.org.pl/>

3. FREEDOM OF ASSEMBLY: THE CRACKDOWN ON PROTESTERS

Amnesty International continues to observe with concern the situation of individuals who have participated in peaceful protests. Thousands of people have taken to the streets since July 2017 in cities all over Poland, demanding respect for the Constitution, an independent judiciary, and respect for human rights and freedoms. Such demonstrations have been met with a set of policing measures that often infringe on the right to freedom of peaceful assembly and expression.

In December 2016, the Parliament adopted a restrictive amendment on the Law on Assemblies.⁴⁶ The amendment entered into force in April 2017 after the Constitutional Tribunal declared that it was compatible with the Constitution.⁴⁷ The law provided that “cyclical demonstrations” organized by the same entity at the same location several times a year had priority over any requests to hold assemblies at that location and at those times. One such “cyclical demonstration” is a pro-government rally that has been convened on the 10th day of every month to commemorate the 2010 Smolensk plane crash during which the then president Lech Kaczyński and 95 other people died. Pursuant to the law, the authorities have routinely banned counter-demonstrations in the area of the Presidential Palace where these monthly rallies are held. Despite the bans, protesters continue to convene counter-demonstrations in the vicinity of the commemoration assemblies. The police respond by issuing fines to its participants for “interference with a legal assembly”⁴⁸ or “disturbing the peace in the form of shouting, making noise or causing alarm”.⁴⁹

In the October 2017 report “Poland: On the streets to defend human rights. Harassment, surveillance and prosecution of protesters”, Amnesty International documented a disturbing pattern of criminalization of protest, and policing practices that amounted to harassment. These practices included harassment and intimidation of protesters, including physical restrictions on access to public spaces; various forms of containment, including “kettling”; monitoring and surveillance at the protests; use of threats and home visits by police; and the pursuit of criminal charges and prosecutions for dozens of protesters. Women’s rights protesters and protesters affiliated with women’s groups reported incidents of verbal or physical attacks from government supporters.

At the time of writing, hundreds of protesters continued to face proceedings in courts under the Code for Petty Offences and in some cases also under the Criminal Code. An estimated 500 cases against protesters are in preparatory proceedings. Although the courts in most cases documented by Amnesty International have dismissed the charges from the outset; or found the protesters participating in peaceful assemblies not guilty; or decreased their fines, there are ongoing concerns over the large volume of pending cases. In light of the growing concerns over the lack of independence of Poland’s judiciary – in particular following the replacements of the presidents of courts – Amnesty International remains concerned that the prosecution of peaceful protesters under the Code of Petty Offences and the Criminal Code amounts to a disproportionate and unnecessary interference with the right to freedom of expression and the right to freedom of assembly.

⁴⁶ Helsinki Foundation for Human Rights. “Constitutional Tribunal: amendments to Assemblies Act constitutional despite all objections.” 16 March 2017: <http://www.hfhr.pl/en/constitutional-tribunal-amendments-to-assemblies-act-constitutional-despite-all-objections/>

⁴⁷ Following the international and domestic criticism of the amendment, the President of Poland referred it to the Constitutional Tribunal in December 2016.

⁴⁸ Article 52.1 of the Code of Minor Offences.

⁴⁹ Article 51.1 of the Code of Minor Offences

RECOMMENDATIONS FOR THE GOVERNMENT OF POLAND

- Amend the Law on the Common Courts, the National Council of the Judiciary and the Supreme Court and remove the provisions that undermine the full independence of the judiciary and put the right to fair trial at risk.
- Amend the Law on Assemblies to remove the provision on “cyclical demonstrations” that gives priority to such assemblies over others and requires a mandatory distance of at least 100 metres between two or more assemblies taking place simultaneously.
- Amend the Law on the Institute of National Remembrance and remove any provisions that criminalize statements that are protected under the right to freedom of expression and threaten to have a chilling effect on freedom of expression.
- Stop any action, including politically motivated disciplinary proceedings, aimed at the harassment and intimidation of judges who adjudicate in compliance with the Polish Constitution and international human rights standards.

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“REFORM” OF THE JUDICIARY IN POLAND POSES RISK TO THE RIGHT TO FAIR TRIAL

**BRIEFING BY AMNESTY INTERNATIONAL AHEAD OF THE GENERAL
AFFAIRS COUNCIL MEETING, MARCH 2018**

This briefing provides examples that illustrate the negative impact on the rule of law and human rights in Poland as a result of the government’s “reform” of the judiciary. Amnesty International concludes that there is a “clear risk of a serious breach” by the Polish government of the values protected by Article 2 TEU, and that Poland is already in breach of its international obligations to uphold the rule of law and protect human rights.

As a result of a set of legislative changes adopted in 2017, the Polish government has empowered itself to exercise control over the judiciary, which puts at risk the right to fair trial.

There are also ongoing concerns over large number of prosecutions of individuals who have participated in peaceful protests; and new concerns over the right to freedom of expression after the amendment to the Law on the Institute of National Remembrance entered into force in March 2018. The law makes it a crime to publicly claim that Poland had any responsibility for or complicity in the Holocaust.