

Warsaw, 13 March 2022

Petition against the destruction of the rule of law in Poland during the war in Ukraine

**To the European Commission
European Parliament
Council of the European Union**

Since Russia's aggression against Ukraine, the Polish government has been positioning itself in the international arena as a defender of freedom and democracy, while simultaneously, in the domestic arena, it has been further destroying the standards of democracy and the rule of law at an accelerated pace, continuing its actions aiming towards the "Putinisation" of the Polish justice system and political system. On international forums, Prime Minister Mateusz Morawiecki boasts about the Polish government's intensive efforts to help refugees from Ukraine. Meanwhile, the truth is that the real help for refugees comes mainly from local authorities and NGOs involved in systemic efforts in this area, as well as from thousands of private individuals who spontaneously help by organizing transport from the border, food, accommodation, etc. Government assistance is decidedly unplanned, late and insufficient.

It is no coincidence that, during the war from the assault on Ukraine, the Polish authorities have already taken a number of measures to further destroy the rule of law. As early as on the second day after the outbreak of war, another Polish judge (Anna Głowacka) was suspended for applying European law and the judgments of the European courts. When the Polish government passed a law on aid for refugees from Ukraine, it tried to push through legislation giving the politicians from the ruling camp impunity for official offences committed during the pandemic and the war. During the hostilities, the President handed out appointments to more than 200 new, defectively nominated (at the request of the neo-NCJ) so-called neo-judges, including 4 appointments to the Supreme Court. Finally, on 10 March 2022, at the request of the Minister of Justice Zbigniew Ziobro, the politicized and fully subordinated Constitutional Tribunal (with the participation of so-called "stand-in judges") undermined the validity of Article 6 of the ECHR in Poland by questioning the ability of the ECtHR and Polish courts to examine the correctness of the appointment of judges and the independence of the neo-NCJ. It is worth adding that earlier, on 24 November 2021, also at the request of the Minister of Justice, the same Constitutional Tribunal (also with stand-in judges) stated that it is not itself subject to assessment as to whether it is an independent and impartial court under Article 6 of the ECHR. So far, the only member state of the Council of Europe, the Constitutional Court of which has questioned its obligation to enforce ECtHR judgments, is the Russian Federation, which has just withdrawn from the Council of Europe.

Furthermore, despite more than 7 months having passed, the Polish authorities have not only failed to implement the CJEU judgments of 14 and 15 July 2021 (C-204/21 R and C-791/19), which, in particular, declared the operation of the Disciplinary Chamber to be incompatible with EU

law and froze the ability to apply the Muzzle Act and ordered the reinstatement of the unlawfully removed judges, but have taken a number of active measures to perpetuate the state of affairs in conflict with European law and to repress Polish judges who implement the CJEU rulings. This is evidenced by the following circumstances:

- the Disciplinary Chamber is still operating (with over 150 hearings held over 50 working days in the last 7 months);
- since September 2021, ten Polish judges (Adam Synakiewicz, Piotr Gąciarek, Marta Piłśniak, Maciej Ferek, Agnieszka Niklas-Bibik, Maciej Rutkiewicz, Krzysztof Chmielewski, Marzanna Piekarska-Drażek, Joanna Hetnarowicz-Sikora and Anna Głowacka) have been temporarily removed from adjudicating for applying CJEU and ECtHR rulings, on the basis of administrative decisions of a politician from the ruling camp – the Minister of Justice or court presidents appointed by him; disciplinary proceedings have been taken against all these judges on the basis of the Muzzle Act;
- four of these judges (Piotr Gąciarek, Maciej Ferek, Maciej Rutkiewicz and Krzysztof Chmielewski) were subsequently suspended indefinitely from the performance of their judicial duties under the Muzzle Act and deprived of part of their remuneration by the Disciplinary Chamber;
- disciplinary charges were brought against Judge Agnieszka Niklas-Bibik for her request submitted to the CJEU for a preliminary ruling;
- explanatory proceedings were opened with respect to 14 judges from Kraków, who declared in writing that they would contest the legal status of the neo-judges and four of them were transferred to other divisions as punishment;
- the establishment of special departments and sections has started in the courts, consisting of only neo-judges, or judges seconded by the minister of justice to adjudicate, or judges promoted to functional positions by the minister, to hear appeals, which prevents the implementation of the judgments of the CJEU by questioning the legal status of the neo-judges and simultaneously undermines the right of citizens to a fair trial before an independent and impartial court;
- the defectively appointed neo-judge, acting as First President of the Supreme Court, Małgorzata Manowska, is preventing the implementation of the CJEU judgment of 6 October 2021 (C-487/19), first by groundlessly withholding the case files in her secretarial office, and then by groundlessly changing the membership of the bench in the case, so that it now mostly consists of neo-judges (who are supposed to rule on their own case in breach of the principle of *nemo iudex in causa sua*);
- both so-called new chambers of the Supreme Court, the legality of which has been questioned by the CJEU and the ECtHR under European law, i.e., the Disciplinary Chamber and the Chamber for Extraordinary Control and Public Affairs, held elections of presidents for another term of office in January 2022 (and President Andrzej Duda made the nominations), which confirms that they intend to continue to operate;
- initially, in the six months that have passed since the CJEU rulings of July 2021, the government coalition did not present any bills that would implement them, and when three bills finally appeared (by the President, the 'Law and Justice' party and Zbigniew Ziobro's 'Solidary Poland'), none of them met the requirements arising from the CJEU judgments or the recommendations of the European Commission – contrary to the assurances, they do not liquidate the Disciplinary Chamber (the President's bill formally liquidates a unit called Disciplinary Chamber, but its members continue to adjudicate), but are purely a clever reshuffling, while the system remains the same; the only civic project that meets these requirements, which was prepared by the association of Polish judges, 'Iustitia', as part of the Agreement for the Rule of Law, was supported by opposition parties, but ignored by the ruling coalition;
- contrary to the CJEU ruling of 14 July 2021, neither of the previously groundlessly suspended judges (Igor Tuleya and Paweł Juszczyszyn) were reinstated in their positions, and when the Deputy President of the Regional Court in Olsztyn, Krzysztof Krygielski, decided to reinstate

Judge Juszczyszyn, the decision was immediately overturned and the functional judge who issued it simultaneously lost his position and was subjected to a wave of administrative and disciplinary reprisals;

- on 14 July and 7 October 2021, verdicts were issued by the politicized Constitutional Tribunal undermining the principle of primacy and direct application of EU law with respect to interim measures and CJEU judgments regarding the judiciary;
- at the end of 2021, the minister of justice who is simultaneously the prosecutor general, applied to the Constitutional Tribunal for a declaration that the mechanism of conditionality (money for the rule of law), as well as the possibility of the CJEU imposing fines for failing to implement interim measures ordered by the CJEU, is in conflict with the Polish Constitution. These cases are pending;
- in December 2021, the Polish prosecutor's office initiated an investigation into the possibility of the judges of the CJEU who issued rulings in cases regarding Poland having committed the crime of overstepping their powers;
- despite the clear and consistent position of the CJEU and ECtHR about the lack of independence of the neo-NCJ – not only has no legislative action been taken to restore the compatibility of the election of the judge-members of this body with the Polish Constitution, but candidates have been recruited for the next term of office on the same unconstitutional basis; the list of candidates indicates that this body will be even more politicized in the future than it is currently – it will consist exclusively of supporters of the authorities and their methods of destroying the rule of law.

It is clear from the above that not only have the Polish authorities failed to take any concrete steps to implement the judgments of the CJEU and ECtHR, but on the contrary, they are blatantly and ostentatiously preventing their implementation, both at the systemic level and at the level of individual repressions of judges who try to implement them. Indeed, it is difficult to imagine what else the Polish authorities could do to prevent the application of European law in the justice system in Poland.

Furthermore, in January 2022, independent media revealed that the government had spent several tens of millions of zlotys of public money, which had been intended to help victims of crime, on enabling illegal the surveillance of people perceived as opponents of the ruling camp using the “Pegasus” spyware. The chief of staff of the largest opposition party and the leader of another opposition group during the 2019 parliamentary elections, as well as an independent lawyer and a prosecutor were among the people who were subject to the illegal surveillance mentioned here.

Finally, in December 2021, having received intelligence on the impending Russian aggression against Ukraine, the ruling coalition almost succeeded in pushing through a bill that would have allowed it to take control of the largest independent TV channel, TVN.

Placing opposition politicians under illegal surveillance and restricting access for citizens to independent sources of information is usually a precursor to more or less open persecution of opposition groups, which can currently be observed in full bloom in Russia and Belarus.

The matter of protecting the rule of law in Poland cannot be postponed or abandoned all the more so at the time of the war in Europe and the associated humanitarian crisis. On the contrary, the terrible war in Ukraine shows what the destruction of democratic standards leads to in the long term. The Polish government must not be allowed to finally kill off Polish democracy under the pretext of defending democracy in Ukraine. Such a scenario is a serious internal threat to the EU.

We therefore ask the bodies of the European Union to use all available means to:

- 1) stop the election of another illegal neo-NCJ and restore the independence of the NCJ (through the election of a correct, constitutional body) by bringing the procedure for the election of its

judicial part into conformity with the Polish Constitution and to enable the body created in this way to verify judicial appointments made with the involvement of the neo-NCJ;

2) remove neo-judges elected to positions with the participation of the neo-NCJ from the Supreme Court;

3) establish a new, transparent and independent system of disciplinary proceedings against judges, combined with liquidation of the Disciplinary Chamber;

4) immediately restore the right of all judges, who have been unlawfully suspended for enforcing the judgments of the CJEU and the ECtHR, to practice the profession;

5) repeal the Muzzle Act.

As the civic society and legal environment, consistently engaged in defending the standards of the rule of law in Poland for the last six years, we would like to point out that the vast majority of the Polish public are ardent supporters of European integration and common transatlantic values. Poland is an important country for geopolitical security and only as a state that respects the rule of law can it be part of the common European system. If the guarantee of democracy in our country is ultimately destroyed, Poland will only constitute a threat, and not a support for the common policy of the European Union, including in connection with external threats. Bearing this in mind, we appeal for support for our democratic aspirations and for the Polish authorities to be prevented from destroying the foundations of the EU from within. Only the consistent use of real, effective instruments will ensure that the rule of law will be restored in Poland.

Signatures of the organizations:

Free Courts Initiative

Helsinki Foundation for Human Rights

Professor Zbigniew Holda Association

Association of Judges "THEMIS"

Polish Judges' Association "Iustitia"

Polish National Association of Judges of Administrative Courts

Wiktor Osiatyński Archive

Bar Association "Defensor Iuris"

Presidium of the Judges' Cooperation Forum

"Lex Super Omnia" Association of Prosecutors

Civil Development Forum (FOR)

The Justice Defence Committee (KOS) is an agreement of 12 organisations associating judges and prosecutors, as well as non-governmental organisations and social initiatives involved in the defence of the rule of law in Poland, which was established to work together when the impartiality of the judges and the independence of lawyers are threatened.

The objectives of the Justice Defence Committee (KOS) are: • to monitor and archive cases of political pressure being exerted on judges, prosecutors, attorneys-at-law, legal counsels and other legal professionals (repression archive); • to provide legal aid to these people; • to provide information about cases of pressure being exerted on judges, prosecutors, attorneys-at-law, legal counsels and other legal professionals.