We are an independent, apolitical and self-governing association of Polish judges.
Our main mission is to defend freedom and civil rights, which are the democratic foundations of Poland - a member of the the European Union.
We have been operating for more than 25 years, also as part of different international organisations of judges. We associate over 3,500 judges, most of them in Poland.

INFORMATION

Polish Judges' Association "Iustitia" opinion against the draft law amending the law on the Supreme Court and certain other laws (Sejm print no. 2870)

15 December 2022 Information

Already nearly PLN 2 billion has been paid by Poles for failure to implement the CJEU's 8nterim measures in the case concerning the defective judicial disciplinary system. The need to implement changes in this area stays in line with the CJEU and ECtHR case law and is also one of the conditions for the disbursement of funds from the National Reconstruction and Resilience Plan (NRP).

Today, a bill amending the law on the Supreme Court and certain other laws (Sejm print no. 2870) was submitted to the Sejm (lower chamber of parliament). However, contrary to the assurances of the drafters, this bill does not meet the milestones agreed with the European Commission, being only an apparent attempt to fulfil them.

It would be a curiosity if such measures aimed at circumventing the 'money for the rule of law' mechanism were to be accepted, when their effect would be to further undermine the rule of law.

(1) This law will not solve the most important problem, which is the functioning of the illegal National Council of the Judiciary (NCJ) and its involvement in the judicial appointment procedure. On the contrary, the draft perpetuates all the pathologies related to the political system of judicial appointments.

(2) The bill contradicts the Constitution of the Republic of Poland to the extent of entrusting the Supreme Administrative Court (NSA) with the competence to rule on judges of common courts and the Supreme Court (SN). This violates the constitutional autonomy of the judicial branches, none of which has authority over the other (Articles 183 and 184 of the Polish Constitution). It is unacceptable in this respect that, for example, a gross and obvious offence of civil or criminal law by a judge of the Supreme Court or of a common court should be ruled on by a judge of the Supreme Administrative Court (NSA) who does not apply that law. This also follows from the milestone that speaks of another chamber of the Supreme Court, not another court (F1.1(a)).

(3) The draft makes an unwarranted distinction between judges and representatives of other legal professions, leaving the hearing of disciplinary cases of all other legal professions, apart from judges, to the Chamber of Professional Responsibility. Meanwhile, the right to a trial belongs to everyone, not just judges (Article 6 of the European Convention on Human Rights, Article 45 of the Polish Constitution). Thus, in this respect, the draft blatantly violates the principle of equality.

4. in the Supreme Administrative Court, almost 1/3 of the composition are defectively appointed judges. Thus, without the exclusion of these persons, this body does not guarantee that cases will be heard by a court established by law (Article 19(1) of the Treaty on European Union; TEU).

(5) The vetting procedure mandated by Milestone F1.2 must not nullify the legal effect of the principle of effective judicial protection in combination with the mechanisms for the application of European Union (EU) law by national courts and the effect of the protective provisions of the CJEU. Judges affected by decisions of the Supreme Court Disciplinary Chamber (ID) cannot be forced to use the procedure indicated in milestone F1.2, especially since the procedure proposed in the draft is flawed and does not meet the requirements of Article 19(1) TEU. The inability to apply the other mechanisms of EU law and the choice of protection for judges affected by ID decisions (in particular in view of the failure of the ex officio procedure to meet European standards) would violate the very essence of Union law, of which the principles of direct effect and the primacy of EU law are part (CJEU Opinion 2/13). Nor can Milestone F1.2 affect the rulings of national courts (Supreme Court, ordinary courts) which, using EU law in their rulings, correctly realise the effects of the principle of effective judicial protection or the CJEU's protective order.''

(6) The draft makes it much more difficult for judges to examine ex officio the status of another judge who has been appointed defectively, although such an obligation is incumbent on every judge. He or she can only inform the president of the collegiate panel of such a situation, which, in the case of a ruling in mixed formations with a preponderance of neo-judges, makes it virtually impossible to examine their status. Disciplinary liability is also still envisaged for refusal to rule with such a judge (as Article 72 § 1 of the Act on the Supreme Court and Article 107 § 1 of the Law on the System of Common Courts, in which the Act of 09 June 2022 (Journal of Laws of 2022, item 1259) broadened the scope of disciplinary liability of judges for, inter alia, refusal to administer justice, have not been repealed). Moreover, the draft law only minimally modifies the impartiality test, based on vague criteria and conditions which, as practice shows, make it a completely fictitious tool. In the light of the draft, it is still the case that the circumstances surrounding an appointment alone are not sufficient grounds for questioning the status of a judge, which violates the CJEU's safeguard of 14-07-2021. This construction of the test makes it a sham tool, with no possibility in practice to eliminate a defectively appointed judge from the composition (violation of milestone F1.1(d)).

(7) The draft is contradictory internally, written sloppily and introduces yet another amendment to the Supreme Court Act, which goes against the principle of stability and predictability of the law. On the one hand, it maintains provisions e.g. Articles 26 § 3, 29 § 2 and 3 of the Supreme Court Act, Articles 42a § 1 and 2 and Article 55 § 4 of the usp, while on the other hand indicating that judges are not liable to disciplinary action for their violation.

(8) It is important to highlight the lack of consultation of the draft with the judicial community, in particular with associations representing judges. Consultation limited to the presidents of the courts, who are the governors of the politician - the Minister of Justice, does not fulfil the requirement of public consultation indicated in one of the milestones.

The Polish Judges' Association "Iustitia" notes that this is another attempt at a framing regulation that does not meet constitutional and international requirements. The passing of this bill will be another step towards chaos in the judiciary, which is - as a result of the laws passed in recent years - in its worst situation in years. The interests of citizens, who are deprived by the Polish state of the right to have their cases heard within a reasonable time by an independent and impartial court, are at stake. This is a huge and difficult to estimate damage inflicted on society. If one adds to this the fact that such actions have the effect of blocking NRP funds, it is impossible to understand in the name of what the authorities are committing such actions. As can be seen from the legislation presented, the overriding objective is to make political appointments and perpetuate them regardless of the social and legal costs. Accepting such legislation, will go against the demands for the restoration of the rule of law.

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