



Rec: Last call to save independence of judiciary in Poland

Distinguished Madam President,

On three occasions the European Commission has initiated procedures at the European Court of Justice to stop the infringement of the rule of law by the Polish government. In two of those cases the Court ruled that there had been an infringement. The third case, where the European Commission claims that how the Polish judicial disciplinary system is framed represents an egregious attack on the independence of the judges and the rule of law, is still pending. Despite the bringing of these proceedings, the Polish government persists in its attempts to destroy the independence of the judiciary and to eliminate all judges who are not willing to submit to this undue influence of the executive branch over them.

The European Association of Judges (EAJ) has recently been informed that in an urgent procedure a new draft law was presented in parliament, which again violates fundamental principles of European Law and which would - if adopted – have a final disastrous effect on the judiciary. This draft law, if enacted, would manifestly undermine the consequences of the ruling of the ECJ of 19.11.2019.

It is proposed, *inter alia*, that:

- New disciplinary offences are defined e.g. failing to apply a legal provision, save where the Constitutional Court has deemed it unconstitutional; the taking of any action which might hamper the work of the justice system; questioning the status of judges, or participating in any sort of political engagement. To take but one of these examples, the consequence of questioning the status of a judge might be dismissal from one's office.
- To introduce a legal definition which provides that being nominated by the President of the State for the position of a judge, is sufficient in itself to constitute a person as a judge. It would be precluded that the Supreme Court assesses the status of a judge.
- It shall be forbidden for Judges of the Polish courts meeting in general assembly to adopt political statements. Resolutions must be taken by public vote, and a list of voters has to

be annexed. Membership of a Judges' Association will have to be declared and judges will have to forward a list of their social media accounts.

- The current arrangement whereby the judiciary is self-governing bodies at the courts are composed of court presidents and other judges should be altered so as that participation of others than presidents of courts, who are appointed by the Minister of Justice, will be reduced.
- In future appointments of the President of the Supreme Court each single justice of the Supreme Court will have the right to nominate a candidate.

It is evident that the proposed amendments infringe fundamental rights, including freedom of expression and freedom of association, as well as threatening the independence of the Polish judiciary, and failing to respect the balance of powers.

Even without these envisaged additional threats the Polish judges are being treated intolerably and have their backs to the wall because of deliberate attempts by the executive branch of the Polish government to undermine them, and which undermining attempts continue. Disciplinary procedures which are politically motivated are being initiated increasingly, with new procedures being opened on pretexts that are more and more arbitrary. The Disciplinary Chamber of the Supreme Court acts in spite of its questionable legal status. More and more judges are under threat. The National Council of Judiciary nominates judges and acts notwithstanding that its legal entitlement to do so is unclear. The parliament refuses to publish the documents relevant to individual appointments (the list of supporters) ignoring a decision of the Supreme Administrative Court, which had ordered such documents should be published

To summarize: there is strong evidence that recent developments in Poland may lead to a judiciary in that country which will have lost its independence and subjugated to the executive branch of the Polish government. It appears that the Polish government is intent on speeding up this process and that it is endeavouring to create a *fait accompli*. We believe that immediate action requires to be taken otherwise this plan to destroy the judiciary will succeed, despite efforts by the majority of Polish judges to bravely defend their independence.

We consider that support from the European Union is absolutely necessary. As president of the European Association of Judges, representing Judges' Associations in 44 countries, I urgently ask both you, Madam President, and the European Commission at large:

- To use all possible means to convince and urge the Polish authorities to stop its undermining of the independence of the judiciary and to re-establish the principles of the rule of law;
- To urge them to refrain from the intended legal amendments, and that if they should persist notwithstanding your representations, that the Commission would commence a new infringement procedure at the European Court of Justice;
- To file a motion before the European Court of Justice to apply interim measures in the infringement case Commission vs. Poland C 791/19 in order to help to stop ongoing misuse of the existing Polish judicial disciplinary system in spite of the unclear framework within which it currently operates; without such measures irreparable damage may be done to the Polish judiciary,

At the inaugural session of the new European Parliament the European Commission expressed its strong commitment to foster and defend the rule of law across the Union. The EAJ took note of this promise with great appreciation. I am convinced that you share our concerns and that you will do your best to meet our requests.

Thank you and best regards

Faithfully

A handwritten signature in black ink, reading "José Matos". The signature is written in a cursive style with a large initial 'J'.

**Igreja José Matos**

*President of the European Association of Judges*