

24 JULY 2017

STATEMENT

Bar Human Rights Committee: grave concern at threats to the independence of the judiciary and the rule of law in Poland

The Bar Human Rights Committee of England and Wales (BHRC) expresses its grave concern as to legislation being enacted by the Polish government which threatens the independence of the judiciary, and fundamentally undermines the rule of law in Poland.

On 12 July 2017 a draft bill (No 1727) regarding amendments to the Supreme Court Act was filed in the Polish Parliament by the ruling Law and Justice (PiS) party. This proposal gives the Minister of Justice the right to remove all current Supreme Court judges and retire them. As of the date of entry into force of this bill the Minister of Justice shall designate judges of the Supreme Court who shall remain in active service. The Court supervises the work of lower courts, confirms the validity of parliamentary and presidential elections, and issues opinions on draft legislation as well as adjudicating on disciplinary proceedings against judges

The amendment additionally fundamentally changes the internal structure of the Court. Where there used to be chambers which corresponded to the jurisdiction allocated to the Court (civil, criminal, labour and military), the draft now replaces them by three new chambers: public law, private law and disciplinary. The disciplinary chamber will be ‘a court within a court’ with a separate registry and budget. Its judges will receive better remuneration (higher by 40 %) than ‘ordinary’ judges of the court. This chamber will be responsible for disciplinary proceedings of members of all legal professions in Poland (judges, public prosecutors, attorneys, public notaries and legal advisers). The Minister of Justice will exercise the actual supervision over the disciplinary proceedings with respect to the judges of the Supreme Court, ordinary courts and military courts, which includes the right to issue binding instructions concerning the course of these proceedings.

According to the European Association of Judges this represents a methodical demolition of the fundamental right to an independent court in a manner never seen in any democratic country belonging to the European Union and governed by the Rule of Law.

The Sejm and Senate have now approved the draft, which is subject to the approval or veto of the President.

A further draft law on the National Council of Judiciary would give the parliamentary majority the right to appoint the members of the Council and thus to influence the appointment of all Polish judges.

Tens of thousands of Poles have taken to the streets to protest against these measures, which follow a multi-stage process of violating the Polish Constitution. This started with an attack on the Constitutional Tribunal (CT) and the National Broadcasting Council. In the view of protesters, PiS is following through on its political programme of changing the state system without officially amending the Constitution, for which it does not have a sufficient parliamentary majority. As the CT is now fully (and unlawfully) under the control of PiS, the Constitution itself is under grave threat.

The Polish government's attack on the rule of law has drawn wide condemnation from the European Commission, the European Parliament, the Council of Europe's human rights commissioner and secretary general, and other international bodies.

- In April 2017, the Council of Europe (CoE) human rights commissioner, Nils Muiznieks, said the Polish parliament should reject amendments to the National Judicial Council Act because they would compromise judicial independence. The Polish government ignored these calls.
- On 18 July 2017, the CoE's secretary general, Thorbjorn Jagland, sent a letter to the speaker of Poland's parliament expressing concern about the draft law on the Supreme Court and the National Judicial Council Act. He urged the Polish parliament to uphold Council of Europe standards.
- On 19 July 2017, the Commission first vice-president, Frans Timmermans, indicated that the Commission was planning infringement proceedings if the law were adopted. He said that the Commission was also considering proceedings under article 7 of the EU Treaty that if accepted by the Council of EU member states could lead to the suspension of Poland's voting rights.

BHRC calls on the Polish government to abide by the clear provisions of the Polish Constitution which declares the state's commitment to an independent judiciary by specifically providing for the separation of powers (Article 10) and in Chapter VIII emphasises the independence of the judiciary from the legislative and executive branches

(Article 173).

BHRC also reminds the Polish government that it is bound by its obligations under Article 6 of the European Convention of Human Rights (ECHR) and Article 14.1 of the International Covenant on Civil and Political Rights (ICCPR), which provide that every person has the right to have cases, civil or criminal, determined by an independent and impartial tribunal established by law. BHRC notes that this is a fundamental right in itself but is also essential to ensure that citizens are able to realise and defend other legal rights.

BHRC also calls on the Polish Government to consider and give due weight to both the UN Basic Principles on the Independence of the Judiciary, as endorsed by the UN General Assembly (Resolutions 40/32 and 40/146 of 1985), and the 2010 Recommendation of the Council of Europe's Committee of Ministers on judicial independence, efficiency and responsibilities.

BHRC therefore calls on the Polish President, government and parliament to reject these draft laws and to withdraw and repeal all the measures which pose such a grave threat to judicial independence and the rule of law in Poland.