



19.11.2018

## DRAFT MISSION REPORT

following the ad hoc delegation to Poland on the situation of the Rule of Law,  
19 - 21 September 2018

Committee on Civil Liberties, Justice and Home Affairs

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**Report**  
**on the ad hoc delegation to Poland on the situation of the Rule of**  
**Law**  
**19-21 September 2018**

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## **1. Objective of the mission**

The objective of this mission of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was to better understand the ongoing reforms of the Polish justice system as carried out by the Polish authorities, their objectives and their impact on the rule of law situation in Poland, within the framework of the Article 7(1) TEU procedure activated by the European Commission on 20 December 2017 in relation to the rule of law situation in Poland.

For this purpose, the delegation met with representatives of the Polish Government, the Sejm and the Senate, political parties, judicial institutions, representatives of the OSCE/ODIHR, legal practitioners, journalists and representatives of civil society.

## **2. Background to the mission: the Rule of Law Framework and the Article 7(1) TEU procedure**

### **2.1. Steps undertaken by the European Commission**

#### **2.1.1. Rule of Law Framework**

In January 2016, the European Commission has initiated a dialogue with the institutions of the Republic of Poland under the Rule of Law Framework with Poland (“pre-Article 7(1) TEU procedure”). After several exchanges aimed at examining the rule of law situation in Poland, the Commission deemed it necessary to formalise its assessment of rule of law situation in Poland at that moment and adopted its Opinion concerning the rule of law in Poland on 1 June 2016. During the next one and a half years, the European Commission adopted four Recommendations taking stock of the rule of law situation in Poland and proposing measures to address the problems identified. On 20 December 2017, the Commission issued a Reasoned Proposal for a Council decision on the determination of a clear risk of a serious breach<sup>1</sup> by the Republic of Poland of the rule of law, hence triggering the Article 7(1) TEU mechanism.

- [1st Rule of Law Recommendation \(EU\) 2016/1374 - 27 July 2016](#)
- [2nd Rule of Law Recommendation \(EU\) 2017/146 - 21 December 2016](#)
- [3th Rule of Law Recommendation \(EU\) 2017/1520 - 26 July 2017](#)
- [4th Rule of Law Recommendation \(EU\) 2017 - 20 December 2017](#)
- [Commission Reasoned Proposal based on Article 7\(1\) TEU for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, COM\(2017\) 835 final - 20 December 2017](#)

#### **2.1.2. Infringement procedures launched by the European Commission against Poland, related to the rule of law**

The Commission also decided to refer the Polish Government to the European Court of Justice for breach of EU law, more in particular the principle of judicial independence (Article 19(1) TEU read in connection with Article 47 of the Charter of Fundamental Rights of the European Union), concerning the following laws:

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<sup>1</sup> Wording of Article 7(1) TEU.

- the Law on Ordinary Courts Organisation (formal notice 28 July 2017 - reasoned opinion 12 September 2017 - referral to the CJEU 20 December 2017)
- the Law on the Supreme Court (formal notice 2 July 2018 - reasoned opinion 14 August 2018 - referral to the CJEU 24 September 2018)

## **2.2. Steps undertaken by the Council**

After having received the Commission's Reasoned Proposal under Article 7(1) TEU, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by Poland of the values referred to in Article 2 TEU. Before making such a determination, the Council must hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The General Affairs Council has heard the Polish authorities a first time on 26 June 2018; a second hearing took place on 18 September 2018.

## **2.3. Steps undertaken by the European Parliament**

The European Parliament has adopted several Resolutions over the course of the past years, addressing the situation of the rule of law, fundamental rights and democracy in Poland:

- [European Parliament Resolution of 13 April 2016 on the situation in Poland, P8 TA\(2016\)0123;](#)
- [European Parliament Resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, P8 TA\(2016\)0344;](#)
- [European Parliament Resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland, P8 TA\(2016\)0442;](#)
- [European Parliament Resolution of 1 March 2018 on the Commission's decision to activate Article 7\(1\) TEU as regards the situation in Poland, P8 TA-PROV\(2018\)0055.](#)

The Parliament also adopted a more general Resolution regarding the EU mechanism on democracy, the rule of law and fundamental rights:

- [European Parliament Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, P8 TA\(2016\)0409.](#)

### 3. Summary of the meetings and visits

#### 3.1.1. Introduction

The Chair of the EP Delegation opened each meeting with a statement on the mission of the delegation. He clarified that the delegation officially took place within the framework of the Article 7(1) TEU procedure activated by the European Commission on 20 December 2017 in relation to the rule of law situation in Poland. Article 7(1) provides that “the Council [...], *after obtaining the consent of the European Parliament*, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2” TEU.

The Chair of the Delegation had requested meetings with President Andrzej DUDA, Prime Minister Mateusz MORAWIECKI, Minister of Justice Zbigniew ZIOBRO, and the leader of the ruling Law and Justice Party (PiS), Mr Jarosław KACZYNSKI. No feedback from President DUDA, Minister ZIOBRO or party leader Mr KACZYNSKI was received. The Chair of the Delegation received a reply on behalf of Prime Minister MORAWIECKI on 19 September informing of his non-availability.<sup>2</sup>

The meeting scheduled with representatives of the Constitutional Tribunal on 20 September was cancelled at the last moment on its request, citing as reasons for the cancellation, firstly, the infringement case pending before the CJEU requiring restraint on the part of the judges of the Constitutional Tribunal to discuss the matters under scrutiny by the CJEU, and, secondly, a lack of clarity as regards the remaining agenda items to be discussed during the meeting. The request for clarification of the agenda to be discussed was never received by the Delegation.

<b>Wednesday 19 September 2018</b>
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#### 3.1.2. Meeting with Mr. Adam BODNAR, Polish Ombudsman, Office of the Commissioner for Human Rights (*EP Liaison Office, 13:45-14:45*)

Mr BODNAR opened the meeting by explaining the role of the Ombudsman in Poland. The Polish Ombudsman is at the same time the Polish Commissioner for Human Rights; the institution was created 30 years ago. The Ombudsman has broad powers to investigate human rights abuses, including civil, political and social rights and rule of law standards, in so far as guaranteed under the Constitution. In case the Polish authorities disagree with the analysis of the Ombudsman, he has the power to refer cases to the Constitutional Tribunal. Altogether, his powers are however mostly of a ‘soft’ nature.

Mr Bodnar was appointed three years ago by the previous Parliament for a five-year term (until 2020), and has 300 members of staff and a yearly budget of 10 million EUR at his disposal, which, in his view, makes the institution an effective one. Under his term, 300 recommendations were issued, and the institution has been involved in 100 legal proceedings. On average, 20 to 25 cases are being referred to the Constitutional Tribunal per year. He feels his institution is supported and protected by the people: according to a survey, 46% expressed their trust in the Ombudsman, 11% does not trust the institution, the rest having no opinion.

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<sup>2</sup> See Annex 5.

As regards the reform of the judiciary during the past three years, the Ombudsman tried to be involved submitting cases to the Constitutional Tribunal on the independence of the Supreme Court, the reform of the ordinary courts, etc. In 2016, the Ombudsman won one case before the Constitutional Tribunal on public media, more particularly on the powers of the National Broadcasting Council. In 2017, the Ombudsman identified different threats to the independence of the judiciary, such as the new Laws on the general organisation of the judiciary and on the National Council of the Judiciary (both already implemented), and the new Law on the Supreme Court (in the process of being implemented). As regards the latter, the Ombudsman is of the view that no legislative body should be entitled to lower the retirement age of active judges. In his opinion, Ms GERSDORF, the First President of the Supreme Court, is entitled to serve her constitutional term of six years, until 2020. This viewpoint is supported by the judgment of the ECtHR, *Baka v. Hungary*, of 23 June 2016.<sup>3</sup>

In general, the Ombudsman is highly critical of the changes to the judicial system introduced during the past three years, and the ongoing reforms. In his view, the reform of the Constitutional Tribunal implemented in 2016, and the more recent reforms of the Supreme Court, the lower courts, the prosecutor's service, the secret service, public media and the civil service, all constitute a danger to the Rule of Law situation in Poland.

Moreover, in his view the role of the Parliament has been marginalised in the passing of legislation on the reform of the judiciary. The Ombudsman presented official opinions to the Sejm and the Senate, but maintained that even reports from the Parliament's internal services, stating the unconstitutionality of several of the reform undertaken, were being ignored by the majority. Finally, the Ombudsman cooperated with the UN Human Rights Committee and the UN Special Rapporteur on the Independence of Judges and Lawyers in an attempt to pass certain messages to the Polish authorities, all to no avail.

In response to several questions of Members of the EP Delegation, the Ombudsman maintained that important reforms of the judiciary are indeed due, but the challenges relate to better distribution of the workload, duration of legal proceedings, digitalisation, the public prosecutor's office, criminal proceedings against people with mental disabilities etc. While the governing party had indeed campaigned on some of those themes, the reforms being carried out serve a different purpose, namely establishing political influence over the judiciary, in violation of the Polish Constitution. The Supreme Court had been assessed every year as one of the best functioning institutions, yet it fell victim to the reforms.

Finally, Mr Bodnar stated that the slow pace of discussions under Article 7(1) TEU have allowed the Government to gain time and implement those problematic changes. This lapse of time produces accomplished facts that are difficult to be undone. He referred to his article in *Politico* of 4 September 2018.

*Materials distributed:*

Commissioner for Human Rights, [\*Summary of the Report on the Activity of the Ombudsman in Poland in 2017, with Comments on the Observance of Human and Civil Rights and Freedoms\*](#) (2018)

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<sup>3</sup> ECtHR, Grand Chamber, Case of *Baka v. Hungary*, 23 June 2016 (Application no. 20261/12).

### **3.1.3. Meeting with Prof. Andrzej RZEPLIŃSKI, former President of the Constitutional Tribunal 2010-2016** *(EP Liaison Office, 16:00-17:00)*

Professor RZEPLIŃSKI, former President of the Constitutional Tribunal 2010-2016 called the recent reforms of the judicial system in Poland, including the reforms of the Constitutional Tribunal, ‘a demolition of the judiciary’ and ‘a dismantling of constitutional democracy’, in violation of Article 2 TEU. He criticised the way the laws reforming the judiciary were passed, without consultation or debate and in a very short period of time, and called them ‘un-laws’. He added that what he called ‘demolition of the judiciary’ was also not among the campaign themes of the current ruling party, so a social contract to carry out such reforms is lacking. According to Prof. Rzepliński, this is also made evident by what he believes to be impressive demonstrations, evening after evening, showing determined support of a large part of the population for the constitutional principle of separation of powers.

As regards the reform of the Supreme Court, Professor Rzepliński commented that the Parliament has every right to create a disciplinary chamber, even if the GRECO Reports of the Council of Europe did not demonstrate cases of corruption of Polish judges. However, he considered the disciplinary chamber as currently being installed ‘a semi-open prison for judges’, posing a real threat to the independence of the judiciary. Prof. Rzepliński is also highly critical of the new law reforming the ordinary court system and the large amount of dismissals of presidents of the lower courts by the President. Furthermore, he is worried about the political influence of the Minister of Justice - who is now also the Prosecutor-General - over the public prosecution offices, which were previously completely separated from the government. Before, the Prosecutor-General was to submit once a year a report to Parliament, and could only be dismissed by a 2/3<sup>rd</sup> majority; this provided a sufficient separation from the Government. Lastly, Prof. Rzepliński indicated that the composition of the new National Council of the Judiciary is highly problematic.

Finally, he was wondering which reforms would come next. He said that there were talks about the appeal courts or abolishing the separate administrative courts system.

### **3.1.4. Meeting with representatives of human rights organisations** *(EP Liaison Office, 17:00-18:30)*

The EP Delegation met with the following representatives of human rights organisations:

- Ms Draginja NADAŽDIN, Director of Amnesty International Poland
- Ms Ewa KULIK-BIELIŃSKA, Director of the Stefan Batory Foundation
- Mr Maciej NOWICKI, Deputy President of the Helsinki Foundation for Human Rights

Mr NOWICKI, representing the Helsinki Foundation for Human Rights, called the reform of the judiciary ‘the worst crisis since communism’, ending the rule of law and separation of powers in Poland. The Government is openly questioning the capacity of courts to pronounce certain judgments, is refusing their promulgation or implementation, and is declaring flagrantly that some judgments are violating the law. Mention was made of the eight referral procedures pending before the CJEU and two infringement procedures that were initiated by the Commission regarding the lack of independence of the judiciary system in Poland. All guarantees for judicial independence have been dismantled during the past years.

Ms NADAŹDIN, representing Amnesty International Poland, presented Amnesty International's report 'Protests on the Street' and expressed concern over the decision of a prosecutor to discontinue the investigation on violence against 14 women counter-demonstrators. She recalled that a spokesperson for the National Council of the Judiciary (NCJ) has said that the international standards on independence of the judiciary are too strict; the NCJ was considering to leave the European Network for Councils of the Judiciary. Ms Nadażdin furthermore explained that the very day the meeting took place, and the day after, four judges were to be heard by the NCJ about their 'activism' in denouncing the ongoing reforms of the judiciary, a move considered a first attempt to discipline judges. Furthermore, the situation of legal uncertainty affecting the functioning of the Supreme Court was exposed: the Supreme Court considers as unconstitutional the lowering of the retirement age and subsequent forced retirement of several judges, and several judges, including First President Gersdorf, have refused to accept the President's retirement decisions.

Ms KULIK-BIELIŃSKA explained that the Stefan Batory Foundation regularly monitors the functioning of the judicial system and funds organisations who do so, such as Court Watch. The reports from such monitoring operations show a clear need for reforms in the Polish judicial system, in relation to, for instance, the right to defence and better information for the public, but also better infrastructure for the courts and more assistance for judges in their work. However, none of the reforms being carried out by the government address those needs.

The 'purge of the judiciary from communist elements' allegedly undertaken by the ruling party was called a pretext for removing judges critical of the reforms undermining the independence of the judiciary. Several members of the ruling party have been active in communist times and under martial law, whereas several judges affected by the 'purge' are in their forties, and cannot possibly have been active in communist times.

Asked by Mr MORAES and Ms SPINELLI about the situation of NGOs in Poland, the Delegation received the following comments:

The representatives of the human rights organisations agreed that, other than in Hungary, civil society is currently strong in Poland, with new social movements being created by citizens worried about the situation in Poland. Nevertheless, organisations are confronted with a deteriorated dialogue with the Government, reduced funding (e.g. for projects in schools; more generally, grants and competitions are being abolished; the 1% tax rule NGOs are currently benefitting from might be revised), blurred award procedures, increased administrative burden, etc. and this in all sectors of society. A crackdown on NGOs, similar to what happened in Hungary, may not be excluded in Poland as well, including restrictive legislation on funding and functioning of NGOs.

New laws are being introduced from day to day, without significant consultation or debate, if any at all. For 'private' bills proposed by individual MPs, consultation is not even compulsory. If civil society organisations manage to get the text of the proposed bills at all, their reports are not presented, let alone discussed. People start fearing the long-lasting effects of the reforms carried through, and may lose interest in expressing their views through NGOs or demonstrations.

As regards the situation of the media in Poland, the representative of the Batory Foundation gave a description of a highly polarised landscape, where media are not even pretending to be

objective. Whereas the public media serve the Government and disperse pure propaganda, the opposition makes itself heard through the commercial media. The ruling party has created a National Media Council; the President of that Council openly calls himself Mr Kaczyński's pit-bull terrier. Also NGOs are being attacked by the public media.

*Materials:*

Amnesty International, Report on [\*'The Power of the Street. Protecting to Right to Peaceful Protest in Poland'\*](#) (June 2018)

### **3.1.5. Meeting with representatives of organisations active in the field of reproductive health and rights (EP Liaison Office, 18:30- 19:30)**

The EP Delegation met with the following representatives of organisations active in the field of reproductive health and rights:

- Ms Krystyna KACPURA, Executive Director of the Federation for Women and Family Planning
- Ms Agnieszka DZIEMIANOWICZ, Black protest activist

Ms KACPURA, representing the Federation for Women and Family Planning, maintained that the 'pro-life' policies of the Government have as an effect that women in Poland have no basic reproductive rights: they have no access to information, contraception, the morning after pill, medical imaging, etc. There are regions in Poland (e.g. the North-East, the South-East and the West) where it is not possible to terminate a pregnancy for one of the three reasons allowed under the strict Polish law of 1993<sup>4</sup>: procedures are stretched too long, examinations happen too late. Pre-natal examination are very hard to get, as they are perceived as a stepping-stone for abortion in case a foetus turns out to be seriously and irreversibly damaged – although this would constitute a lawful cause for abortion. A judgment allows doctors, when morally objecting to abortion, not to tell women where they can go to terminate their pregnancy in accordance with Polish law. In her view, doctors and pharmacists abuse the so-called conscience clause not to prescribe or sell contraception.

The effect of these policies and attitudes is that women run health risks going abroad for an abortion even for cases allowed under Polish legislation, such as for genetic damage to the foetus. Post-abortion treatment may be required; the stigma on abortion is however such that, once back, women may not seek treatment in case of complications. There is also an economic dimension to having to go abroad: not everyone can afford it.

A draft law proposed by Ordo Iuris aimed at removing from current Polish law the possibility of abortion in case of serious and irreparable genetic damage to the foetus was not adopted after days of strikes and protests by tens of thousands of women. According to Ms DZIEMIANOWICZ, a Black Protest activist, even a total ban on abortion has been proposed; including making abortion a criminal offence punishable with a jail sentence. The

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<sup>4</sup> Abortions can be legally obtained in Poland only in the following cases: when the pregnancy poses a threat to the life or health of the pregnant woman, as attested by two physicians; when there are reasons to suspect that the pregnancy is a result of an unlawful act, such as rape or incest, as confirmed by a prosecutor; or when prenatal tests, confirmed by two physicians, demonstrate that there is a high probability that the foetus is seriously and irreversibly damaged or that the foetus' life is threatened by an incurable disease (Act of 7 January 1993).

Constitutional Tribunal has been questioned about the constitutionality of the draft law, which is back on the table after the Church exerted pressure; the ruling is expected for November.

According to Ms Dziemianowicz, there is not much support among political parties for basic reproductive rights for women, including sexual education in schools. Until 1993, women had the same sexual and reproductive rights as in the West. In the nineties, 1,5 million signatures in a referendum organised by NGOs were ignored by the Government. Since the fall of communism, most parties seem to have an understanding with the Polish Catholic Church that they will act on a radical 'pro life' agenda in turn for support by the Church – with the consequences described earlier. At the beginning of his term, the new Education Minister issued an internal recommendation proclaiming that sexual educators cannot visit schools. Parents are bringing their children to the offices of the interlocutors' organisations to get sexual education by a group of peer educators.

The interlocutors explained that their organisations, and also organisations fighting violence against women at home, have been cut off from any public funding a long time ago, whereas their mission is a mere observance of women's rights. They survive on individual donations or EU funding. They are not being treated as partners for dialogue with the government: there is no response to letters, reports, opinions issued. A request to the 'Procreational Health Minister' to be part of a consultative group was ignored.

Mr BAY expressed the view that the meeting with the organisations in question fell outside the scope of the Rule of Law mission, for pertaining to differences in political viewpoints only, which is the exclusive remit of national politics. The interlocutors' right to assembly and freedom of speech were not being infringed. He stated that the organisations themselves want a ban on posters comparing abortion with Nazi practices and showing aborted fetuses, hence favouring a restriction of the freedom of speech of 'pro-life' campaigners. One of the interlocutors replied that while the current law is not in breach of international and constitutional law standards, its implementation is falling short of such standards. In practice, women do not have access to prenatal examinations, the morning after pill or abortion under the three cases allowed under the law. Binding laws aimed at protection women's reproductive rights and right to health protection are thus not observed. Reproductive rights are not just a separate feminist issue; they are part of human rights and the rule of law.

<b>Thursday 20 September 2018</b>
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#### **3.1.6. Meeting with Members of the Sejm (*Sejm/Senate*; 8:30-9:30)**

The EP Delegation met with the following Members of the Sejm:

- Mr Ryszard TERLECKI, Deputy Marshal
- Mr Stanisław PIOTROWICZ, Chairman of the Justice and Human Rights Committee

Mr TERLECKI, the Deputy Marshal, recalled that after years in the opposition, the PiS party won the elections three years ago, by absolute majority. He stressed that during the election campaign, and also during the time spent in the opposition, one of the main topics raised by PiS was the need to reform the justice system, which had not been reformed since communist times. The vast majority of Poles thought the justice system was unfair.



According to Mr Terlecki, the criticism on the reforms carried out in the justice system are an attempt by the opposition to undermine the Government, since there are no signs that the opposition can win the elections in a democratic way. That is why the opposition resorts to undemocratic means: for instance, the accusation that the Government used force against demonstrators is entirely false; at most, protestors blocking the passage were removed from the pavement. The opposition is trying to use the EU in convincing it that Poland is acting in breach of its own Constitution and laws. Some media participate in this political game; it is important to note that today 80% of the media market is owned by foreign capital.

Mr Terlecki expressed satisfaction about the presence of the EP delegation in Poland, for this kind of study visit: this would allow the authorities to explain the situation in Poland as it is in reality. He denounced that the EP delegation was apparently meeting mostly with opponents of the ruling party.

Mr PIOTROWICZ, the Chairman of the Justice and Human Rights Committee, reiterated that, according to a survey, 80% of Poles are unhappy about the justice system, and want deep reforms. This Committee received over 4500 complaints from citizens when it was still in the hands of the opposition. A vast majority of the complaints pertained to the functioning of the justice system and the elitist behaviour of the judges. Judges cannot act as a special cast elevated above the population, which can pass any judgment they deem fit, with disregard for the limits of the law, without any form of control. Poland therefore needs legal instruments assuring a balance between the three powers, while keeping to constitutional rules.

Politicians, big business lobbies, media, can all exert pressure on judges; this can pose a threat to their independence. Every judge should have the inner strength to resist to such pressures. The Polish legal framework provides for independence of the judges when passing judgment.

Mr Piotrowicz went on to explain that the National Council of the Judiciary (NCJ), one of the State's most important institutions, had been reformed. The NCJ is the body appointing most judges, and proposing candidates for hierarchical positions in the judiciary to the President. The Chairman called the accusation that the institution was politicised a lie, or else critics don't know the Polish Constitution; the NCJ is by nature a political body, with representatives of the executive, the legislator and the judiciary, in line with the Constitution. The NCJ is composed of the Minister for Justice, a representative of the President, Senators, presidents of the most important courts and fifteen members selected among the judiciary. While the opposition maintains that those fifteen judges should have been selected by the judges, the Constitution does not state this explicitly; it only lays down that the law will determine the way they are to be appointed. The ruling party therefore took a legitimate approach in having the judges appointed by the Parliament. Besides, a two-third majority is needed for Parliament to appoint the judges, so the ruling party could not decide alone on the appointments. Finally, a variety of traditions exists among Member States as regards the composition of national councils for the judiciary.

A majority of judges appointed by judges would moreover constitute a risk, since the NCJ could then act as a quasi-union for judges, fighting for privileges for the class of judges. This was the case for the previous NCJ: judges were controlling judges, but in practice they would protect each other; they were not accountable to anyone else. That is why judges feel uneasy today: finally, there is oversight on the administrative system of justice. But nobody is exerting pressure on judges on how they should adjudicate.

Lastly, Mr Piotrowicz expressed praise for the creation of two new Chambers in the Supreme Court: a disciplinary chamber to hold judges accountable and counter the overall sentiment of impunity in the judiciary, and the extraordinary appeal chamber.

Asked by Mr BAY and Ms BERGERON how the judges to be appointed by the Parliament are preselected, by means of a competition or otherwise, Mr Terlecki explained that candidates have to be supported by 25 judges or 2000 citizens before they can submit their candidature for the NCJ. Parliamentary groups, including the opposition, all have their candidates. Typically, when in power, the opposition parties deem institutions to be legitimate, while they no longer do so when in opposition. He went on to explain that the Government acted upon a promise to bring the retirement age down to 65 for judges, as for all Poles. According to the Constitution, this is a parliamentary prerogative. Ms GERSDORF, former First President of the Supreme Court, made a free choice not to apply for an extension of her office term.

Finally, Mr MORAES asked the interlocutors' view on what they thought would be the reason the EU and international organisations were expressing so much concern about the recent reforms of the Polish justice system, more particularly about the Government's extended influence on the judiciary. In reply it was stated that this is partly due to a lack of knowledge and facts, erroneous premises leading to false conclusions. Moreover, the judges community has been going abroad spreading false facts. A lack of understanding was expressed on why the opposition seemed to be thinking that 'the worst was going to happen' to Poland; one needs to let the reforms first settle in, before one can judge them.

### **3.1.7. Meeting with Members of the National Council of the Judiciary** (*National Council of the Judiciary; 10:00-11:00*)

The EP Delegation met, inter alia, with the following Members of the NCJ:

- Mr. Leszek MAZUR, Chairman, Judge of the Regional Court in Częstochowa
- Mr. Dariusz DRAJEWICZ, Vice-Chairman, Judge of the District Court Warszawa-Mokotów in Warszawa
- Mr. Wiesław JOHANN, Vice-Chairman, Judge Emeritus of the Constitutional Tribunal
- Mr. Marek JASKULSKI, Member of the Council, Judge of the District Court Poznań-Old Town in Poznań
- Ms. Teresa KURCYUSZ-FURMANIK, Member of the Council, Judge of the Voivodship Administrative Court in Gliwice
- Mr. Maciej MITERA, Member of the Council and Spokesman, Judge of the District Court Warszawa-Śródmieście in Warsaw
- Mr Stanisław GOGACZ, Chairman of the Legislation Committee, Senate
- Ms Krystyna PAWŁOWICZ, Member of the Sejm

The Chairman of the NCJ, Mr MAZUR, opened the meeting by stating that, as a starting point, the rule of law situation in Poland was being presented as a problem by the EU. Asked by the Chair of the Delegation why he thought the EU and international organisations had repeatedly expressed concern about the rule of law situation, the Chairman recalled that the Polish judicial system had not been reformed over the last 20 years, that there was a huge lack of trust in the system among the population and that legislative reforms were therefore long overdue.

One of the Members of the NCJ, a judge, explained that no separation of powers is ever absolute, and that the Polish Constitution provides for checks and balances between the powers. He maintained that the suspension of the NCJ from the European Network of Councils for the Judiciary is unjustified: the statutes of the ENCJ do not provide for this particular ground for suspension used; suspension can only be justified on grounds of non-fulfilment of the objectives and tasks described in the statutes. He suspected that other motives had guided the ENCJ to take this decision.

The judge went on to praise the reform of the Supreme Court, which seems to be surrounded by myths. In the newly created disciplinary chamber, lower judges will, for the first time, be allowed to participate; this is a clear improvement. As regards the lowering of the retirement age of the Supreme Court judges, the judge maintained that this reform is entirely in line with the Constitution, which mandates the legislature to lay down rules for the retirement of judges, and which is still the same Constitution as on the date of Polish accession to the EU. Moreover, judges who are forced to retire at 65 have the possibility to request a prolongation of their mandate to the President. Nothing therefore jeopardises the basic principle of independence of the judiciary: judges cannot be eliminated; as a mere administrative rule, they have to retire at a certain age. This has nothing to do with the administration of justice.

Mr ENGEL suggested that any reform of a justice system needs to be handled with a degree of softness, for instance by applying the new retirement age only to new recruitments. Also, changing a system of peer election for the NCJ judges into a system of political appointment is simply not perceived to be the right way.

The judge replied that several judges of the Supreme Court, among which Prof. Malgorzata GERSDORF, the President of the Supreme Court, decided not to submit a request for prolongation of their mandate to the President of Poland, and hence rejected the degree of softness provided for within the new Law on the Supreme Court. The President was therefore not in the possibility to prolong their mandates. The judge said he personally regretted it happened that way. The NCJ did not voice an opinion on the terms of individual judges, and was not implicated in the retirement procedures. The Supreme Court vacancies that had to be filled by the President on a proposal by the NCJ at the time of the EP delegation visit were unrelated to the retirements.

Ms PAWŁOWICZ, Member of the NCJ and Member of the Sejm, intervened to say that Prof. Gersdorf had claimed that the Sejm had acted unconstitutionally when adopting the new Law on the Supreme Court. However, the Constitutional Tribunal did not declare the act unconstitutional. Those judges apply the law as they deem fit. She continued by calling out that the visit of the EP delegation of the European Parliament was a provocation, and that she felt humiliated as a lawyer. As an MP, she did not need to mind her language, as judges have to. The Members of the EP delegation did not understand anything about Poland, and outright defied Article 4 of the Polish Constitution, which grants the Sejm its legislative powers.

A judge, Member of the NCJ, made reference to a letter prepared for the EP delegation. A discussion ensued on whether the EP delegation had come to Poland with good or bad intentions. Ms BERGERON intervened to say that she did not intend to give the Polish authorities a lesson in democracy.

Another judge, Member of the NCJ, wondered whether the European Commission wanted to pass to Poland a subliminal message, or whether there were other reasons for the Commission to start an infringement procedure against Poland. He denounced that the European Parliament and the European Commission were misinformed about the legal situation in Poland. He explained furthermore that, as a judge, he could not participate in a political dialogue; he could only bring legal arguments – contrary to Germany, where judges can belong to a political party or a trade union, and where there is a system of political appointments for the highest judges. He concluded by saying that he had no suspicion of bad will vis-à-vis the Delegation on his part.

*Materials distributed:*

- National Council of the Judiciary, *Collection of the Acts and Resolutions Regarding the National Council of the Judiciary of Poland*, <http://www.krs.pl/en/about-us/legal-acts>
- National Council of the Judiciary, *Status, Aims and Activities of the National Council of the Judiciary of Poland within Current Legal Framework*
- National Council of the Judiciary, *Analysis of public discussion on the need to reform the National Council of the Judiciary as a response to the demands and postulates of the ENCJ and Polish society between 2016-2018*
- National Council of the Judiciary, *Analysis of the assertion of the alleged removal of Supreme Court justices as a result of changes adopted in the Act on the Supreme Court and other aspects of change*

**3.1.8. Meeting with leaders of the main opposition parties<sup>5</sup>** (*National Office of Platforma Obywatelska, 11:00-12:15*)

The delegation met, inter alia, with the following leaders and representatives of the main opposition parties:

- Mr Grzegorz SCHETYNA, Chairman of Platforma Obywatelska (Civic Platform)
- Mr Borys BUDKA, Former Minister of Justice, Spokesman Legal Affairs, Platforma Obywatelska
- Mr Paweł ZALEWSKI, Shadow Cabinet, former MEP, Platforma Obywatelska
- Ms Katarzyna LUBNAUER, MP, Leader of .Nowoczesna (.Modern)
- Ms Kamila GASIUK-PIHOWICZ, Political Group Leader in the Sejm, responsible for judicial reform, .Nowoczesna (.Modern)
- Mr Marek SAWICKI, representing party leader Władysław KOSINIAK-KAMYSZ, Polskie Stronnictwo Ludowe (Polish People's Party)

Mr Grzegorz SCHETYNA, Chairman of Civic Platform, recalled the history of his party, which had grown from the ashes of Solidarity, the main opposition movement under communist rule. His party is currently fighting for independence of the judiciary, separation of powers, the rule of law, the most basic rules. He maintained that bad things were happening to Poland: above all, the Constitutional Tribunal ceased to be independent.

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<sup>5</sup> The EP Delegation had sought to meet Mr Kaczynski, leader of the ruling Law and Justice Party, but did not obtain such meeting.

Ms LUBNAUER, leader of .Modern in the Sejm, described how the whole judiciary milieu, including lawyers and barristers, would be affected by the newly created disciplinary chamber; the Supreme Court was being cleansed in order to gain political control over the top Polish court, the delegation was said to be witnessing the last stage of the fight of the executive with the judiciary. Soon, everybody will be loyal within the system, from the lowest to the highest level of the courts. The Supreme Court is moreover competent to validate the elections. The system will soon have seized to be independent. Realistically, the CJEU should henceforth be considered as replacing the Polish Constitutional Tribunal, which is not operating anymore in fact. The number of cases referred to it has diminished considerably, since nobody believes in its independence of judgment anymore.

Mr BUDKA, the spokesperson on legal affairs for the Civic Platform, set out how the Polish Minister of Justice is also the country's General Prosecutor, who can give orders to any prosecutor in the country; moreover, he enjoys immunity as Member of Parliament. Judges issuing judgments not to the liking of the Prosecutor General now face disciplinary procedures. Hence, judges who pronounced themselves against certain changes to the judicial system that would pose a threat to its independence would be facing disciplinary proceedings that day and the day after. This should be considered as intimidation. Furthermore, six judges loyal to the governing party would be appointed into the Supreme Court later that day.

Ms Kamila GASIUK-PIHOWICZ, Political Group Leader in the Sejm for .Nowoczesna, expressed the hope that the European Commission's infringement procedure launched against the Law on the Supreme Court could have the effect of suspending the Law's effect and preventing the Supreme Court being purged from many of its well-functioning judges. It will be important to see who will be to act first: the Polish President announcing new nominations, or the CJEU. She considered that Poland is drifting towards the East and stressed that the country was at a tipping point; these were the very last moments where the EU could stop the downward spiral. She recalled the need to criticise the Government, not the people, and to be very precise in the criticism. Later that day, systematic government-led prosecution of judges would start. Among others, the Chair of the biggest Polish judge association would be heard. In the meantime, opposition politicians have had their immunity repealed, like the speaker's, since she participated in the debate on the reform of the Supreme Court.

Asked by Mr ENGEL about how far the Government would, in their view, want to carry the transformation of the Polish State, Mr BUDKA invited the delegation to watch public TV that evening: they would find that the EU is being depicted as an enemy, that specific countries are being demonised, and that the UK is being praised for Brexit. While he agreed with the Government that Bolshevik propaganda should be prohibited, the Government was itself spreading propaganda unheard of since communist times.

Mr TOMASEVSKI stated that the Delegation should not be ideological, but should rather strive to obtain information by asking questions. Ideological differences would remain in Poland; one had to look rather for solutions to this polarisation, ways to try to find a middle ground. As a Pole living abroad, he deplored this war of Poles against Poles.

In response, Mr BUDKA hoped the dialogue would be restored, one day, since today there is none. He wondered whether a unitary government would be needed, and whether such huge differences could ever be settled in Poland. It is normally the Constitutional Tribunal who should settle constitutional disputes, but that Court had been politicised with the appointment of three illegal judges, and could no longer be considered as a Constitutional Tribunal (a 2015

judgment of the Constitutional Tribunal ruled the appointment under the previous government of two judges illegal and of three other judges legal; the new Government, however, appointed five new judges, making it impossible for the three legally appointed judges to pass judgment in a legal way). The same was happening to the Supreme Court. He wondered whether, as a result, the country would be torn between East and West, like Ukraine. He warned that also the Baltic States are vulnerable to this evolution.

Mr Paweł ZALEWSKI, a former MEP of Civic Platform, maintained that the previous government had made constitutional errors, but that the Constitutional Tribunal fulfilled its role of watchdog until December 2015. The situation is extremely different today. In 2011, Mr Kaczynski of the Law and Justice Party wrote a book, revealing some of his intentions for the country: he wanted to introduce a new regime in Poland with nationalism as uniting value, and to create a country fully in line with the party. The ruling party is taking over the judiciary for a reason: it wants to get grip on the state. Public administration has been politicised; the secret services have been manned with party partisans; the local governments will be next up. State-owned companies have been taken over - every single one of them. The justice system is an extremely important element in this bigger picture. A simple narrative of the good Poles, supporting the nationalists, against the communists and thieves, is to guarantee support from the population for those reforms.

Mr ZALEWSKI said that Mr Kaczynski, the leader of the ruling party, does not believe in democracy, nor in win-win solutions with the EU. The EU, and the rule of law dialogue under Article 7 of the EU Treaty, are perceived as unwarranted restriction on his power. The public campaign discrediting the EU is aimed at avoiding an impact on public opinion of the EU in Poland. A large majority in Poland is still in favour of EU membership; they don't understand the link with the reform of the judiciary.

Ms GASIUK-PIHOWICZ, from .Nowoczesna, took the floor to explain what political action was being undertaken to offer a counter-narrative. She mentioned the low participation rates in the elections, meaning that the 37% of the votes won by Law and Justice – sufficient according to the new Polish Election Law to form a majority - correspond to only 5 out of 40 million Poles having voted in their support, which is a mere 18% of the population that is (offering support for) destroying the pillars of democracy in Poland.

Mr BAY countered that the discussion with the political leaders was basically a political one. The Government was holding a comfortable majority as opposed to its divided and small opponents. The mission in question is however not about politicking, but about human rights. The appointments of the judges were after all backed by a majority. While not every judicial system is perfect, one could indeed debate about the merits of self-selection of judges among the judiciary. Ending mandates earlier could pose problems of acquired rights. But altogether, we are talking about rather limited rules, and few judges involved. In all the discussions conducted so far, with NGOs, the NCJ, the political leaders, Mr BAY had not heard any arguments that would prove a systematic attack on the Constitution or on the Rule of Law in Poland.

In reply, Mr BUDKA put forward the following series of reforms which would, altogether, represent a systemic attack on the Polish Constitution:

- The illegal appointment of three judges to the Constitutional Tribunal in 2015;
- The Justice Minister being at the same time the Prosecutor General with all rights attached but without control, while also being an MP enjoying immunity;

- The National Council of the Judiciary, which, according to the Constitution, should have a majority of judges among its members, has seen those judges being appointed by a parliamentary majority; eight of them were promoted thanks to the Minister of Justice who is also the Prosecutor General; despite the secret ballot, voting advice had been handed out;
- Judges who pass judgments not to the liking of the Government are facing prosecutions;
- The constitutionally guaranteed terms of Supreme Court judges have been shortened;
- The Supreme Court which is to confirm the validity of the elections, is now dependent on politicians; the separation of powers has been eliminated.

Ms SPINELLI asked about the political response of the joint opposition: the Law and Justice Party was not solely about authoritarianism, but delivered on social demands that had been ignored by the previous ruling coalition. What had happened to the concept of solidarity? The population has had to suffer from austerity measures after 1989.

Mr BUDKA responded that this was a purely political question, an internal issue on which Poles would decide. The opposition was not challenging the mandate of the current ruling party to rule, nor their social policies. The concern was however that the next general elections might not be democratic, for lack of independent judicial oversight. The opposition parties however wanted to draw the attention of the Delegation to changes violating the Rule of Law, the EU Treaties and the Polish Constitution.

Law and Justice was operating according to a very well-known authoritarian scheme: firstly, by using its access to the (EU) budget, which might involve bribery, corruption; secondly, by using intimidations, including repealing immunity of opposition members and instigating disciplinary procedures against judges; - thirdly, by using propaganda. While the game had to be played in very tough conditions, the opposition was ready to take it on.

### **3.1.9. Meeting with representatives of ‘Wolne Sady’ (Free Courts) (EP Liaison Office; 14:00-15:00)**

The Members of the EP Delegation met with the following representatives of ‘Wolne Sady’ (Free Courts):

- Mr Michał WAWRYKIEWICZ, lawyer
- Ms Paulina KIESZKOWSKA-KNAPIK, lawyer

One of the lawyers representing ‘Wolne Sady’ explained that the objective of ‘Wolne Sady’ is to provide a link between judges and NGOs. An overview was given of the reforms of the Polish judicial system from the last three years. The starting point was the ‘attack’ on the Constitutional Tribunal, which was taken over by the ruling majority within one year. From then on, the ruling majority could pass any law without verification. Then the government took on the common courts, and the National Council of the Judiciary (NCJ). The concluding piece of the reform was the overhaul of the Supreme Court.

The lawyer singled out the reform of the NCJ as a highly problematic part of the reform. A majority of judges making up the NCJ is henceforth appointed by the Parliament, in violation of the Constitution and EU Treaties. The NCJ no longer being independent, it can no longer protect the independence of the judicial system and the individual judges.

The Supreme Court was at a tipping point: that very day, ten new judges would be sworn in. Two new chambers had been created: a disciplinary chamber and a chamber for extraordinary control. The former would be responsible for approving election results, and for disciplinary proceedings against all levels of judges. The ruling majority hence assured itself of a direct influence on the day-to-day adjudication practice: there were already many examples of restrictions against judges speaking out critically about the reforms of the judicial system.

Another lawyer speaking for ‘Wolne Sądy’ added that, on those very days, four judges who had been vocal in one way or another about the reforms were being heard by the disciplinary chamber, composed of judges appointed by the Prosecutor-General, i.e. the Minister of Justice. One of the newly appointed judges of the disciplinary chamber had a track record of almost 100% overrulings of his judgments by appeal courts. On the other hand, one of the judges being interrogated for having referred a preliminary question to the European Court of Justice (CJEU) about the creation of the disciplinary chamber had a perfect record as a judge. In total, thirteen judges had referred questions on the reform of the judiciary to the CJEU so far; this is an act of bravery in view of the threat of disciplinary proceedings. Other judges were being given completely different tasks in different courts, and suddenly have to work on other specialities of law; such practices boil down to harassment. The speaker added that they too, as lawyers speaking out via ‘Wolne Sądy’, risked disciplinary proceedings and could see their title of lawyer removed.

Poland has seen waves of street protests, people are vocally disagreeing with the Government’s reforms jeopardising the independence and functioning of the judiciary. Such protests, however, could be said to be dangerous for citizens. Around 1000 cases have been brought against protestors, for instance because they were projecting films on buildings, which supposedly ‘could damage the buildings’.

The lawyer continued that their hope was vested in the infringement procedures initiated by the European Commission and the preliminary references made by Polish judges in respect of several elements of the judicial reforms. A suspension of the new Law on the Supreme Court by the CJEU on the basis of the Commission’s infringement procedure initiated against that Law was urgently needed. The ‘Wolne Sądy’ lawyers considered the CJEU to be Poland’s highest court and the only independent court left to protect the rights of the Poles. While the legitimacy of the government was not questioned, it had to act within the limits of the law. The accusation that ‘Wolne Sądy’ would be protecting the old system is not true: a reform of the justice system was indeed long due, but then in terms of access to justice, speed, quality, access to information, etc.

The ‘Wolne Sądy’ lawyers told the Delegation that they were legally representing some of the Supreme Court judges over 65 years who were sent on retirement; they appealed against the NCJ decision to the Supreme Court, made up of the remaining younger judges. This normally entails the suspension of the retirement procedure. Nevertheless, a few days earlier, the President had issued the next seven retirement decisions, hence ignoring the powers of the Supreme Court – which the speaker thought was astonishing. Five judges were fighting the retirement decision; proceedings were ongoing. Moreover, the Supreme Court had referred preliminary questions to the CJEU, and issued an interim measure stating that judges over 65 should stay on until the CJEU’s answer was received; again, such legal effects were denied. At the pace the Government was nominating new judges, the reform of the Supreme Court could be finalised before the CJEU has given its ruling. Some politicians had already announced that



they would not respect the ruling; nevertheless, the speakers considered it crucial to have that and other decisions by the CJEU issued.

Ultimately, the Government's operation of politicising the courts would affect all citizens. People will be running around, not knowing which court to go to. The speaker, a lawyer defending inter alia children's access to healthcare provided by public money, explained being confronted already with a situation of not finding an independent judge that would dare to uphold the law against the Polish Minister of Healthcare. Other cases were mentioned, such as that of a simple car accident involving a Polish citizen and a Polish minister, which was surrounded by much secrecy, and for which the prosecutor had been changed for no clear reason. The CJEU's preliminary ruling, which came at the request of an Irish judge hesitating to extradite a Polish citizen to the Polish authorities on grounds of lack of an independent judiciary in Poland, was cited by Ms SARGENTINI as another case in point to illustrate that the Polish judicial reforms were already affecting the day-to-day adjudication of justice in Poland and the EU. Ultimately, the 'Wolne Sady' speaker continued, Poland could be getting to the point where democracy itself can be blocked: the elections could easily be rigged, since they are henceforth controlled by the disciplinary Chamber of a politicised Supreme Court.

Mr MORAES asked how the Polish people were perceiving the reforms of the judiciary, and how the organisation tried to make people aware about the importance of an independent judiciary. It was recalled that, despite the abstract and dry nature of the subject of judicial reforms, and the lack of tradition with judicial freedom in Poland, protests are still alive, and many people care. The pace of change is however so fast that it is hard to follow for ordinary people. In addition, judges don't generally have the skills or habit to speak up in public. 'Wolne Sady' is therefore trying to educate the population with short educational movies posted on social media featuring artists and singers to explain the ongoing reforms and their effects. It should be kept in mind that the effect on public opinion of propaganda through governing-leaning newspapers is huge, including slogans that "All judges are communists" - despite the average age of the judges being only 41 years of age.

### **3.1.10. Meeting with Members of the Senate (*Sejm/Senate; 15:30-16:30*)**

The Members of the EP Delegation met with the following Members of the Senate:

- Mr Michał SEWERYŃSKI, Deputy Marshall, Senate
- Mr Stanisław GOGACZ, Chairman of the Legislation Committee, Senate
- Mr Robert MAMAŹOW, Chairman of the Human Rights, Rule of Law and Petitions Committee, Senate

After the welcome words from Mr SEWERYŃSKI, Mr MORAES, the Chair of the EP Delegation, explained the mission's purpose, which was to understand the reforms and their objectives. He reiterated that the purpose of the mission was not a mere study visit but was part of a formal process launched in July under Article 7(1) TEU.

He asked why the Members of the Senate believed that the reforms, which also affected provisions of EU law, raised concern among credible external and international organisations.

Mr SEWERYŃSKI, the Deputy Marshall, explained that the transition from communism to democracy was a difficult path. He was not representing the position of the Senate, as there

was no coherent stance within the Senate on the reforms; the reforms had passed by means of a majority vote. According to his personal view, the dispute between the ruling coalition and the opposition was an ideological dispute, mirroring the divide in today's Europe and in historical and geographical terms. That ideological dispute relates to how countries should be organised, in terms of Rule of Law and civil society. The interpretation of key legal terms can vary, and is even unavoidable: they have to be translated into institutional life, political life, laws, case law (although those manifestations should all be respectful of the Constitution).

The Government is seeing to it that Poland has a functioning judiciary system: proceedings should not be too lengthy, etc. A reform of procedural civil and criminal law is being prepared by the Government. Doubts have been expressed that democracy, the rule of law, civic rights and liberties would not be observed; the speaker said not to share that view. There had not been concrete examples yet of such violations. All Senators from the governing party were bearing the constitutional values and guarantees in mind; a lot of discussions had been held about constitutionality in the Senate. The opposition did their best not to overlook anything, which is their duty.

The speaker explained, invoking his background as law professor, that the reference to the values in the EU Treaties was only indirect, and that there were no specific standards or norms for EU Member States as to how courts should be organised. A fair and balanced trial was still guaranteed in Poland; no procedural provisions concerning the Supreme Court had been modified; the same was true concerning the NCJ. Poles have their access to justice guaranteed; judges are independent. Furthermore, every judge needs an inner strength to adjudicate independently.

The present Polish Constitution was democratically adopted in 1997. It is stated in that Constitution that it is the prerogative of the President to appoint judges; one cannot appeal against a constitutional prerogative. The Polish President is not part of the executive but has his own status as guarantor of the Constitution; this guarantees his independence.

Mr GOGACZ, Chairman of the Legislation Committee, reminded the Members of the EP delegation that they had met earlier that day, at the National Council of the Judiciary (NCJ); he is a Senator and Member of the NCJ. He explained that he was a member of the previous NCJ as well; his membership depends on his parliamentary term. He went on to express regret for the fact that the European Network of Councils for the Judiciary (ENCJ) had suspended the membership of the Polish NCJ, recalling that the NCJ was one of the co-founders of the Network. Speaking on criticism from external organisations about distorted standards of powers he stated that the ENCJ's statute does not mention suspension as a sanction. He said not to be aware of the specific allegations against the Polish NCJ.

The Parliament will not just appoint anybody to the NCJ; candidates need the backing of 25 judges, or of 2000 citizens; they also need the backing of the NCJ. The situation is similar when the President is appointing judges: his decision is informed by a proposal of the NCJ. He explained that the NCJ is a body of the government, not a body that can govern itself. Independence is part and parcel of the profession of a judge; the appointment method will not change that.

Asked Ms SARGENTINI how they perceived the halted extradition of a Polish national by an Irish judge on ground of lack of assurances about the independence of the Polish judiciary, Mr SEWERYŃSKI reiterated that the EU had not enacted rules regulating or imposing a specific

model for the organisation of the judiciary in the Member States, and that it did not have the exclusive or shared competence to do so. He regretted the decision by the Irish judge, which displayed a lack of trust; he blamed it on ignorance about the Polish judicial system.

Mr MAMAŁOW, Chairman of the Human Rights, Rule of Law and Petitions Committee, asked where the Delegation perceived a contradiction between a parliamentary appointment and independent behaviour of judges. Judges need to be selected for their ethical behaviour; they need to be fit to give ex officio advice on draft legal acts. Moreover, only 15 out of 25 members of the NCJ are appointed by the Parliament.

Mr GOGACZ added that his own appointment was a case in point: judges are being promoted to the NCJ as a reward for a respected career. Other judges may be removed because of underperformance. Such control is badly needed, since the justice system had not been reformed since the communist period. Many old communists are still holding onto their positions; it is time for them to leave the system. The Senator explained that half of the citizens' complaints he receives relate to the justice system, the way citizens are being treated in courts, the arrogance of the judges.

Mr MORAES, the Chair of the EP delegation intervened, saying that there may be an anomaly in that explanation, as they had been confronted with several young judges in their forties who have recently faced or are facing disciplinary proceedings for speaking up about the reforms; they could not possibly be old communists.

Mr SEWERYŃSKI recalled that it is up to each Member State to decide about retirement age. Asked about why he thinks the lowering of the retirement age for the Supreme Court judges is being criticised by the European Commission and international organisations, Mr Seweryński indicated that he is aware of the criticism that a change in the retirement age should not negatively affect sitting judges. But he explained that this is unavoidable, also for other professions. Retired judges can no longer adjudicate, but retain their level of remuneration, their immunity and professional standards; retirement is therefore not so drastic. They are therefore still better off than in other professions.

Mr MAMAŁOW took the floor; Ms SARGENTINI intervened, asking whether he was speaking in his capacity of Senator or Member of the NCJ. Mr MAMAŁOW replied that there was no need to distinguish between both functions. Candidates judges for the Supreme Court needed to be scrutinised for complying with a sufficient level of legal experience; they cannot be politically active and simultaneously also being a judge.

Ms SPINELLI stated that enforcing EU law is not only question of dealing with arrest warrants. Major part of national law are now EU law, and EU regulations are moreover directly applicable. National judges are therefore simultaneously European judges and there is a need for a uniform vision on the rule of law. Mr Seweryński had stated at the beginning of the meeting that there are two distinct visions in Poland and Europe on the rule of law; Ms Spinelli asked to explain that second vision, as she perceived only one set of rule of law principles and rules.

Mr BAY maintained that independence of the judiciary is no miracle solution, and that countries should try to find the least bad solution: the Polish reforms are about correcting faults in the system, making judges accountable. Mr Bay said that while in France judges are appointed among them, this does not guarantee their independence; judges frequently take

position in election debates. Consequently, some countries fare even worse than Poland. Moreover, in all Member States the Attorney General is hierarchically dependent on the Minister of Justice. Combining the two functions is therefore a source of transparency and the criticism is to be considered unfair.

Mr SEWERYŃSKI repeated that no EU law is imposing upon Member States how the judiciary should be organised and regulated. This falls within the remit of Member States' internal affairs. The differences in judicial organisation stem from deep ideological divisions, which are to be considered mainly political. For instance, the Polish judges organisation 'Iustitia' should rather be considered as a trade union for judges; in Poland, it is forbidden for judges to set up unions. Iustitia's ideological assessment of the reforms is that the ruling party is reinstating communism in Poland.

As regards the merging of the functions of Minister of Justice and Prosecutor General, Mr SEWERYŃSKI revealed that, while the previous Government had divided up the two functions, it had plans to merge them again just before the elections. There is no one ideal solution as to how to organise a justice system. This boils down to politics, i.e. two different visions on who should decide on prosecutions within a society. The ruling party was of the opinion that dividing the two functions sat uneasy. Previously, the Prosecutor General's independence was not real anyway: he had to present a report to the Minister of Justice, who, if he did not accept it, could dismiss the Prosecutor General.

Mr GOGACZ came back to an issue raised previously and stated that judges in their forties were not the ones the Senators were talking about, and that the EP delegation was well aware of that; the Chair rebutted that his comment was not a joke but that he was expressing a serious concern. Mr SEWERYŃSKI maintained that no judge had been removed for their political views, and that no political pressure had been exerted; the contrary would be very difficult to hide for the authorities. He concluded by recalling that the reforms were all about building a democratic Poland after the collapse of communism, and that different interpretations exist about the standards of democracy and the rule of law. He asked to remember what happened in Poland in 1993: the left, former communists running for election under different names, won the elections; the opposition respected this result.

### **3.1.11. Meeting with representatives of the Supreme Court of the Republic of Poland** (*Supreme Court; 17:00-18:00*)

The EP Delegation met with the following Supreme Court Judges:

- Ms Malgorzata GERSDORF, First President of the Supreme Court
- Mr Dariusz ZAWISTOWSKI, President of the Civil Chamber of the Supreme Court
- Ms Katarzyna GONERA, Head of division of the Labour Law and Social Security Chamber of the Supreme Court

First President GERSDORF welcomed the delegation and explained the legally unclear situation in which she was working: while the Government had sent her and several other Supreme Court judges on retirement after adopting a law lowering the retirement age, the Supreme Court had not recognised the President's retirement decisions. Nevertheless, she was visited in her office by the Prime Minister the day before, which could be perceived as some

form of recognition of her position. She stated that these were difficult and confusing times for judges in Poland.

Mr MORAES, the Chair of the EP Delegation, reiterated the purpose of the mission, which was not a mere study visit, but was part of a formal process launched in December 2017 under Article 7(1) of the EU Treaty.

Ms GERSDORF explained that the situation of the Polish judiciary was highly dynamic; the reforms happened very rapidly and unexpectedly. They are unexpected because it cannot be said that the reforms as carried out correspond to the slogans use by the ruling party during the elections. The changes to the judicial system are only and exclusively aimed at replacing staff in order to making judges dependent on the ruling party and the Minister of Justice, who is henceforth also the Prosecutor General. Poland now has a mock-up of the Constitutional Tribunal: practically all judges have been appointed by the ruling party. The amount of complaints being put to the Constitutional Tribunal has decreased considerably, since there is an understanding that the ruling would not be impartial anyway.

President ZAWISTOWSKI explained that the new National Council of the Judiciary had been appointed according to completely different rules than in the past: peer appointments from all levels of courts have been replaced by parliamentary appointments. Only two parties participated in the vote; the entire opposition boycotted the vote, deeming it unconstitutional. The opinions of the Supreme Court and the old NCJ were not taken on board. Since the new NCJ is no longer an independent body, it is incompatible with the standards upheld by the European Network of Councils for the Judiciary; therefore, the NCJ was almost unanimously suspended. Likewise, the requirements of the Polish Constitution regarding the election of judges are no longer met. Ms GERSDORF added that it is quite remarkable that the NCJ counts only two justices from district courts and not a single one from the Supreme Court. Also, the nomination procedure was confidential; support for justices should be made public for reasons of transparency.

Turning to the recent nominations to the Supreme Court, Ms GERSDORF explained that those were marred by many procedural flaws. That day, ten judges were to be appointed to the new disciplinary chamber, which would become a court within the court: the First President would not have a say on its organisation, nor in budgetary terms. Three of the newly appointed judges are prosecutors; this may reveal the repressive nature of the future body. Those disciplinary proceedings are perceived as a great threat to the judicial independence by the judges community, especially with a Minister of Justice being at the same the General Prosecutor. This accumulation of influence is unseen since 1989.

Justice GONERA took the floor to explain in more detail how the new disciplinary proceedings have been conceived by the Government. There will be two disciplinary instances, the first one at the level of an appellate court, and the second one the newly created disciplinary chamber of the Supreme Court. Proceedings can take place in the absence of a judge. Also lay judges have been appointed by the Senate into the disciplinary chamber, which will be highly dependent on the Minister of Justice/Prosecutor General. Those very days disciplinary hearings of judges held by disciplinary prosecutors were taking place; their supposed mistake was to take the floor in public debate and criticise the reforms. The next day, a judge, president of an association representing more than 3000 judges, would be summoned. Judges are being restricted in their right to act publicly in Poland. Yet they felt they needed to speak out in defence of the citizens' right to access to justice. Ms GERSDORF added that others were being

prosecuted for having issued judgments not to the liking of the ruling party. A judge from Łódź had referred a preliminary question to the CJEU. The Prosecutor General had issued a statement that he needed to have a close look at seven judges, and he is interrogating them now; this will no doubt have a chilling effect. Several among them are women, who may be afraid.

The Law on the Supreme Court is also creating an extraordinary appeal chamber, which will function as some sort of fourth instance, a special complaint institution for blatantly unfair cases. Both judges and lay judges are being appointed by the Senate; the lay judges are not required to be lawyers. The latter is remarkable in view of the expected legal complexity of potential cases.

On the lowering of the retirement age, it was explained that a Supreme Court judge reaching the retirement age could ask the Polish President for a prolongation of their term of office twice for three years upon providing a certificate from a doctor and a psychiatrist. There were no criteria established for the President to base his decision on; no possibility to appeal to the decision is foreseen. 27 Supreme Court judges received retirement decisions by means of a simple letter from the President – there was no formal decision. Twelve judges requested a prolongation of their term of office, of which seven were refused and five were prolonged, again with a simple letter not stating any reasons. The judges faced with a refusal appealed to the letters; they also asked for a formal decision – which they did not obtain. Other judges, including the First President, refused to request an extension, referring to the Polish Constitution which granted them a six-year term. Their labour contracts expired on the 3th of July. The remaining Supreme Court judges adopted a resolution declaring that Ms Gersdorf remained their First President. This legally unclear situation was not comfortable, however. The First President explained that she had appointed a Deputy President, who could sign financial documents in her absence. While the Prime Minister had come to see her the day before, the situation of unconstitutionality was not resolved.

Ms SARGENTINI asked how the judges see further judicial cooperation within the EU after the CJEU's preliminary ruling on request of an Irish judge hesitating to extradite a Polish national to Poland for lack of an independent judiciary. Ms SPINELLI inquired about the policy objectives behind the reforms. President ZAWISTOWSKI acknowledged that, with a politicised judicial system, judgments could later be challenged. This creates an unprecedented and dramatic situation, which poses challenges to which no clear answers exist. For instance, there are no legal means available to challenge the President's appointment and retirement decisions. The ruling party cannot freely amend the Constitution with their current majority; however, it is adopting laws at a high rate and fast pace, overnight, without (obligatory) consultations nor debate, and without real risk that the reformed Constitutional Tribunal will annul them.

The Chair of the EP Delegation indicated that the timeline of the events as they were unfolding in Poland was extremely important for the European Parliament to understand within the framework of the Article 7(1) TEU mechanism. The First President expressed her gratitude about the visit and the opportunity to be heard.

### **3.1.12. Meeting with representatives of the Polish Judges' Association 'Iustitia'** (*EP Liaison Office; 18:15-19:15*)

The EP Delegation met with the following judges, representatives of 'Iustitia':

- Prof. Krystian MARKIEWICZ, President
- Tomasz MARCZYŃSKI, Vice-President for Organisational Matters
- Bartłomiej PRZYMUSIŃSKI, Spokesperson, Member of the Board

The first judge the EP Delegation spoke to explained that he and a colleague would be facing disciplinary proceedings the next day, his colleague for reason of having referred a preliminary question on the interpretation of EU law to the CJEU. This was unheard of, and the judicial system was once more heading into uncharted waters.

Iustitia is the biggest judges' organisation in Poland, representing around 3500 judges out of a total of 10000 judges. Over the last two years, the organisation had done everything within their powers to raise the alarm over the reforms of the Constitutional Tribunal, the National Council of the Judiciary and the Supreme Court, including reaching out to international organisations. Talking was not enough, the reforms now started to affect the lives of reliable judges.

Another judge, who had to leave the meeting earlier to go to a TV studio to talk about the disciplinary proceedings he was facing, described the chilling effects of what was happening: judges might think twice before referring a preliminary question to the CJEU. The Government maintains that the judges are undertaking political activities by being critical. If judges no longer refer preliminary questions to the CJEU on the interpretation of EU law, this will start to become noticeable in Polish case law.

A third judge speaking for Iustitia recalled some of the recent reforms, maintaining that the NCJ had become a puppet, and that the disciplinary chamber being installed that very day and the disciplinary proceedings that were already under way were sowing fear among the judges. Other 'small' events had the same chilling effect: judges were being moved to other departments against their will; previously, such decisions belonged to the internal management of the court, since August, it is the newly composed NCJ deciding. The judge himself had learned a few days before that he would be moved to another department; he would only be able to appeal to the NCJ. He said not to be sure the delegation would be able to meet them next year as judges. They were living in a different world than two years ago, when they were guests in the European Parliament.

Ms SPINELLI remarked that the ruling party, in order to allegedly purge the judiciary from communists, was exactly reintroducing old authoritarian methods. She was wondering what the ruling party intended to obtain, and whether they felt backed by the population. The President of Iustitia declared that many of the judges being confronted with disciplinary proceedings are in their forties; they could not possibly have been involved in the judiciary under communist times. Only two of the judges being removed from the Supreme Court have served under martial law during the communist regime; this does not justify an entire campaign to purge the judiciary as voiced by the Government. Instead, he perceived a brutal take-over of total power in the country. It started with the Constitutional Tribunal and had now reached all the other courts. No other EU Member State organises disciplinary proceedings with competence over all legal professions outside the judicial power; the reference by the ruling party to Spanish and German models is pure demagoguery. The judge regretted that the European Commission had not taken any decisions that week in the framework of the infringement procedure it had initiated against Poland on the Law on the Supreme Court.

Another judge added that the Leader of the ruling party had declared that, as long as the judiciary would remain as it is, the Government would not be in a position to implement the changes it had in mind. Therefore, the judiciary had to be ‘reformed’. The judge added that in his Court only two judges started their careers under communism; one became the President of the Court upon adjudication by the Minister of Justice! In one year’s time, there would be general elections in Poland, the results of which would be corroborated by the newly created extraordinary appeal chamber. Soon, the changes to the judicial system will be having repercussions for the EU institutions as well.

<b>Friday 21 September 2018</b>
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### **3.1.13. Meeting with representatives of the Organisation for Security and Cooperation in Europe’s (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) (OSCE/ODIHR; 8:30-9:30)**

The EP Delegation met with the following representatives of OSCE/ODIHR:

- Dr Marcin WALECKI, Head of the Democratisation Department
- Ms Andrea HUBER, Deputy Chief, Rule of Law Unit
- Julia GEBHARD, Legislative Support Officer, Legislative Support Unit

*The meeting with the ODIHR representatives took place under the Chatham House rule. Therefore, only an abstract of the meeting is included in the mission report.*

The representatives of ODIHR gave a brief introduction on the mission of ODIHR and its recent activities on the rule of law situation in Poland. A short summary of the most recent legislative changes relating to the organisation and functioning of the judiciary was given, together with an assessment of their effects on the rule of law situation in Poland, in particular as regards the independence of the judiciary. With one exception, the concerns expressed in ODIHR’s legal opinions in 2017, which are widely shared by other representatives of international organisations and civil society, have not been rectified yet through the amendments adopted in 2018. The law-making process and finally, the regional context of the developments were also discussed.

### **3.1.14. Working breakfast at the Ministry for Foreign Affairs (Ministry for Foreign Affairs; 10:00-11:15)**

The delegation met with the following representatives of the Polish Government:

- Mr Jacek CZAPUTOWICZ, Minister of Foreign Affairs
- Mr Konrad SZYMAŃSKI, Secretary of State for European Affairs, Ministry of Foreign Affairs
- Mr Marek SUSKI, Secretary of State, Head of the Prime Minister’s Political Cabinet

After exchanging welcome words and opening statements, Mr SZYMAŃSKI recalled that after the meeting, an expert seminar would take place, to offer the EP Delegation an analysis of the current rule of law situation in Poland.



Mr SZYMAŃSKI deplored the aggressive language being used vis-à-vis his country and the ongoing reforms and he expressed his surprise that there was so much interest for Poland's internal affairs. The secondary effects of the controversy were sometimes worse than the reforms causing the controversies. In a spirit of mutual respect, it was however necessary to attempt together to control the controversies. In his view, the EU Treaties entirely leave it to the Member States how they organise their justice system. There are of course common values enshrined in the EU Treaty; those are, as a matter of fact, the same ones laid down in the Polish Constitution.

To overcome some of the concerns raised by the European Commission, Poland adopted more than 25 amendments of quite a fundamental nature to the proposed acts, which sparked little reaction from the Commission's side. The extraordinary appeal chamber is now in place; it is expected that only few cases a year will be heard by the chamber, so this should not be considered as an overhaul to the system. Overall, the reforms to the judicial system are in conformity with the Polish Constitution and the EU Treaties. The remaining tensions and emotions are superfluous, since not helpful. The ruling party is part of the pro-European majority in Poland. That is the reason why we invited you for this dialogue.

Mr MORAES, the Chair of the EP Delegation declared that the Delegation's aim is to make progress and help find solutions. Therefore, it intends to examine aspects of concern to many international organisations. The Delegation is composed of MEPs from across the political spectrum and came with great objectivity. It spoke to all sides, even if it was not possible to obtain all the meetings it had wanted. If all concerns are considered together, there is a real fear today for the evolution of the Polish judicial system. The suspension of the National Council of the Judiciary from the European Network of Councils for the Judiciary is another case in point.

The Chair asked what the Ministers thought about the way the reforms were being perceived by EU and international organisations, and whether the current situation of the rule of law in Poland could be rectified or whether the Government planned rather to try to convince the international organisations and the European Commission that they were wrong.

The Minister of Foreign Affairs, Mr CZAPUTOWICZ, recalled that they had been in touch with First Vice President of the European Commission Frans Timmermans in the past six months, and that they had revised certain aspects of the law to accommodate concerns of the Commission. They had presented a White Book in which they described the reforms and compared them to other countries. He insisted that the reforms to the judicial system carried out in Poland are not different from what exists in other Member States, such as the UK and Spain, and that they are in conformity with the rule of law. The European Commission said that this might be true for individual reforms, but that there is a cumulative effect, leading to a violation of the rule of law. That is a strange reasoning that the Polish Government does not accept. So far, it did not manage to convince most countries, however.

Subsequently, the European Commission decided to bring an infringement procedure before the CJEU. The Polish Government accepts the dialogue under Article 7 TEU but wonders whether it should discuss those reforms at all at political level while the CJEU case is still pending; it is important not to prejudge the result. Moreover, the problem is a purely legal one; the Government should have to right to present its arguments before the Court, not in public or

through a political dialogue. The Treaties provide the right instruments for resolving the problem. When the CJEU gives its ruling, Poland will respect it, as it always did.

Mr ENGEL recalled that some Polish politicians had announced that they would not respect the CJEU ruling. He also evoked that the Delegation endured the same morning an oral attack by an MP, Member of the NCJ, shouting that Poland was a proud country and that the Delegation had no right to be there and question them. This stood in sharp contrast to the alleged desire of the Polish Government to be and remain part of the international and European community. Such qualifications should be omitted from the language used in this dialogue.

Mr ENGEL continued by maintaining that the cumulative effect is relevant: while it may be the case that the Minister of Justice is also bestowed with the function of Prosecutor General in another Member State, the Polish reforms added up amount to a control of politics over the judiciary. He wondered why laws would have to be passed at night, in only a few days' time, without debate or consultation, and why the legislative debate could not take place in a normal way. He concluded by saying that, although the Article 7 TEU procedure is sometimes called the "atomic bomb procedure", it is in fact a structured dialogue, which hopefully will lead to a solution. Impasse is not good; only enemies of the EU really profit from a destabilisation of the Union.

Mr SUSKI, Head of Cabinet of the Prime Minister, introduced himself as a non-lawyer and stated that he would speak about the **political aspects of the reforms**. Already during the election campaign, the Law and Justice Party announced a reform of the judicial system, which had not been reformed since communist times. Some judges are thieves, others violent persons, others have given wrong convictions; judges considered themselves to be a caste above the law. The Polish people therefore had a legitimate expectation that the justice system would be reformed. Justice should be fairness; that is why the ruling party decided to deliver on its promise.

Mr SUSKI explained that, once the necessary changes were introduced, such as a lowering of the judges' retirement age to have everyone equal before the law, or establishing the necessary controls on the financial side, an outrage followed, claiming that the ruling party attempted to influence the justice system. The new laws however do not affect the way judges are to deliver justice, i.e. the content of their decisions. The reform of the justice system was expected and wanted; the reason for the criticism by the opposition is that they had previously politicised the justice system and would lose their privileges. Some individuals were afraid that their personal malpractices would be uncovered. Certain judges are very wealthy: some NCJ judges were hiding gold in their gardens and it is unclear where the money came from. Criminals have donated cars to judges to escape punishment; judges maintained that revocation would mean interference with the justice system. The ruling party is not attempting to influence the case law, but merely wants to bring justice.

According to Mr SUSKI, many Poles are of the opinion that the launching of the Article 7 TEU procedure in relation to the rule of law situation in Poland is completely unfair. While the Government accepted the criticism of the European Commission and tried to rectify the law where necessary, the EU should not expect praise from the population, which expects the Government to get rid of the pathologies of the justice system.

As regards the legislative process, Mr SUSKI explained that passing laws late at night after a long debate that started in the afternoon is not so unusual. What is more, the opposition had

tabled a large amount of amendments in an attempt to delay the vote on purpose, so they would be able to say that the vote took place late at night.

Mr SUSKI recalled that the ruling party stemmed from a centre alliance and had EU and NATO accession in its programme. The ruling party was therefore highly surprised to meet with such opposition from the EU, all the more so since legal expert reports prove that the reforms have been carried out in full respect for the Polish Constitution. The Polish political dispute has been brought to the European Parliament by the Polish opposition, and the European Parliament has in effect been abused, as was the European Commission. Mr SUSKI insisted that it was important for the EP Delegation to understand that this situation stems from an internal political fight: the opposition had announced a brutal war. Poland was the first country that stood up against Russia and against the German fascists. What Moscow imposed in the past, was now being imposed by Brussels; however, the offspring of citizens who fought the communist regime wanted to continue to be a nation that would determine its own faith. Now the opposition was running a political campaign through the European institutions.

Mr MORAES, the Chair of the EP Delegation, expressed comprehension for the fact that there was an internal political divide over the reforms, recalling that they were all politicians in the room. The concern however extends to future generations of Poles if the effects of the reforms would be such as to fundamentally alter the checks and balances of the Polish constitutional system. The EU's actions should in any case not be perceived as directed against the Polish people. The Chair expressed concern over the alleged purge of the judiciary from so-called communist elements as the Delegation had learned that the average age of the judges was only 40 years.

Mr CZAPUTOWICZ, Minister of Foreign Affairs, maintained that some judges were secret communists, and that they had even admitted it. The Government had received complaints from people who had been convicted under communism by the same judges. The judges in their forties would of course not be affected by the lowering of the retirement age. But there would not be equal treatment if not all judges could work until reaching the same age, if older judges would be allowed to work longer than younger judges; this also follows from a ruling of the ECtHR. Mr CZAPUTOWICZ recalled that the European Commission is asking the CJEU to order Poland to readmit the retired judges. Whatever the ruling may be, Poland would implement it, as it did with the CJEU ruling on the original forests. He asserted that there might be different ways of implementing it, since it would not be evident if judges would have to be treated differently as regards their retirement age, depending on whether they started prior or after the law entered into force.

Mr CZAPUTOWICZ invited the EP Delegation to continue the discussion with the experts. A short discussion ensued between the EP Delegation and the Foreign Minister on the expected added-value of a seminar at expert level in the context of the EP mission. Mr MORAES, the Chair of the Delegation, considered that technical discussions could be held in Brussels, while the aim of the mission to Warsaw was to meet with political authorities responsible for the reforms to the judicial system. The Chair regretted they could not meet with Mr Kaczynski, the leader of the ruling party, and Mr Ziobro, the Minister of Justice. He invited them both over to Brussels to continue the dialogue.

Ms SPINELLI insisted that the Delegation Members were not held 'prisoner' of the opposition and had gathered sufficient information to find that there was at least a problem of legal certainty in Poland. She recalled the CJEU's European Arrest Warrant case as evidence that

the reform of the Polish Justice system was already affecting the implementation of EU law, more in particular cross-border judicial cooperation in criminal matters.

Ms BERGERON wondered whether the Article 7 TEU procedure had not been triggered too soon in relation to the rule of law situation in Poland; she suggested it may have alienated the Polish people from the EU. Instead, it would have been better to maintain a soft dialogue between the EU and Poland.

Mr CZAPUTOWICZ concluded the meeting by saying that Poland is a sovereign country but is not anti-European. One could witness the rise of Euroscepticism across the EU, which he called worrying. The Foreign Minister said he perceived Poland as having contributed to the strength of the European project. The Polish Government wants to reinforce European integration; it would be premature to criticise Poland.

### **3.1.15. Expert Seminar at the Ministry of Foreign Affairs (*Ministry of Foreign Affairs; 11:15-12:30*)**

The Delegation met with the following experts of the Foreign Ministry:

- Mr Konrad SZYMAŃSKI, Secretary of State for European Affairs, Ministry of Foreign Affairs
- Mr Piotr RYCHLIK, Director, Legal and Treaty Department, Ministry of Foreign Affairs
- Mr Paweł JABŁOŃSKI, Deputy Director, International Projects Coordination Department, Ministry of Foreign Affairs
- Mr Michał MAZUR, Deputy Director, European Policy Department, Ministry of Foreign Affairs

Mr SZYMANSKI opened the expert meeting. He recounted a number of reforms to the Polish judicial system (composition and election of the NCJ; lowering of the retirement age of the Supreme Court judges), and recalled that the retirement age for male and female judges had been equalised at the request of the European Commission.

Mr JABŁOŃSKI explained that the total number of judges of the Supreme Court had been brought from around 80 to 120 judges. Two new Chambers had been created; all judges would have the same retirement age, but could ask the President for an extension of their term. 27 judges were concerned by the lowering of the retirement age. 12 judges submitted a request to the President to be prolonged, of which 5 judges effectively received a prolongation of their term, after a positive opinion of the NCJ and a positive decision by the President. The same happened to the highest administrative court: 23 judges declared they wanted to continue beyond the retirement age.

Mr JABŁOŃSKI maintained that there never was an intention to overhaul the judicial system; the power to appoint judges is a constitutional prerogative of the Polish President. He wondered whether being appointed for life, as judges were previously, would be more in line with the Constitution; after all, the Constitution states that the age limit for judges is to be determined by statute. Mr Jabłoński entered into the question whether the new rules should only apply to newly appointed judges, and pointed to a similar situation in 1997, which had been ruled constitutional back then. Moreover, the new retirement age regime was softened by the fact

that up to five years of prolongation could be granted by the President. Finally, also in the past the six year term for Supreme Court judges had been interpreted as applicable only until retirement age; the Polish CJEU judge M. Safjan was in such a position.

Mr JABŁOŃSKI went on to compare the NCJ to other Member States' Councils for the Judiciary. He explained that those institutions would also not always count a majority of judges, and the judges would sometimes be elected by the Parliament, and sometimes appointed by the Government. Member States' models differed greatly, but nobody ever claimed that this would pose a deviation from international rule of law standards. He praised the transparency of the NCJ: also meetings of its subcommittees were being broadcasted, not only meetings of the full Council.

As regards the reforms of the Supreme Court, Mr JABŁOŃSKI explained in greater detail the functioning of the extraordinary appeals chamber. He countered the criticism that 'social justice' would be too wide a criterion for the control of final verdicts, by making reference to the Polish Constitution and the EU Treaty, in which that value is enshrined. He explained that this extraordinary remedy was based on a model remedy suggested by the Council of Europe to the Member States. The use of the remedy is moreover based on very strict criteria, which made that during the first six months of its existence, only two appeals were admissible out of 3000 citizens' requests. The use of the remedy was therefore sufficiently narrow, and had been narrowed down even further last May.

Mr SZYMANSKI maintained that the Polish Government expected and deserved a neutral assessment of the situation of the rule of law in the country, close to the facts.

Mr ENGEL expressed concern about the cumulative effects of the various reforms to the judicial system carried out. He expressed the view that the totality of the reforms came across as a stronghold by the ruling party on the justice system. While the ruling party would not be in the capacity to directly influence the content of judicial decisions, the reforms could generate a large amount of loyalty among the judges. While no justice system is ever perfect and reforms may indeed be a legitimate aim, transitional arrangements in case of reforms are essential. This is all the more so when the Constitution explicitly lays down a six-year term for Supreme Court judges. Without transitional arrangement, one creates the impression that certain persons need to be removed.

Mr SZYMANSKI recalled that the constitutional traditions of the Member States differ greatly and that the international rule of law standards are vague. The argument of the cumulative effect of the reforms is a weak one: either individual changes to the system constitute breaches of EU law and international standards, or they do not. There is no clear evidence of a breach of the EU Treaties or of secondary EU legislation.

*Materials:*

PowerPoint presentation

### **3.1.16. Meeting with representatives of the Ordo Iuris Institute for Legal Culture** (EP Liaison Office; 13:45-14:15)

The EP Delegation met with the following representatives of the Ordo Iuris Institute for Legal Culture:

- Dr. Tymoteusz ZYCH, Member of the Board
- Ms Karina WALINOWICZ, Director of the Centre of International law

Dr. ZYCH asserted that there is a lot of political bias against the reforms of the judicial system carried out by the Polish Government. Many general statements are being made on the state of democracy and the rule of law situation in Poland; in his view, however, if one sticks to the details, it turns out that most arguments regarding breaches of human rights or procedural democracy are unsubstantiated. Dr Zych added that one can of course politically disagree on the substance of the reforms and that the legal debate regarding the adequacy of the measures introduced is open.

Dr. ZYCH explained that Ordo Iuris is an institute for legal culture, an impartial think tank. In 2016, it produced the most comprehensive study on democracy, rule of law and human rights in Poland. The book will be updated later this year. The Institute had submitted remarks on the appointments to the Constitutional Tribunal carried out by the previous government at the end of its term but was not followed by many organisations back then. When President Duda refused to swear in a group of judges, including those obviously illegally appointed, this became contested, while a significant group of legal scholars claims that the explicit presidential prerogative to swear in judges implies the negative competence to refuse to swear in judges that have been appointed by Parliament.

Ms SARGENTINI and Ms SPINELLI asked Dr. ZYCH to elaborate not only on Ordo Iuris' views on the state of democracy and the rule of law in Poland, but also on the apparent pro-life agenda of the organisation, as displayed in the book disseminated by the speaker. Dr. Zych explained that Ordo Iuris supported a ban on eugenic abortion, i.e. on unborn children with a severe disability. He said this viewpoint was in line with a Recommendation of the UN Committee on Rights of Persons with Disabilities (CRPD). According to Dr. Zych, more than 800.000 people had supported the bill, while a pro-abortion bill received the support of 200.000 people. The Polish Government however did not take any significant steps to expand the protection of the lives of the unborn, not even in response to citizens' initiatives coming from civil society. Asked by Mr MORAES, the Chair of the EP Delegation, why he thought a Government of this conviction was not adopting stricter abortion legislation as asked by Ordo Iuris, Dr. ZYCH responded that the Government i.a. gave in to pressure from a part of the international and EU bodies, which has been exercised despite lack of competence in this respect.

*Materials distributed:* J. Banasiuk and T. Zych (Eds.), *State of Democracy, Human Rights and the Rule of Law in Poland. Recent Developments*, Ordo Iuris Institute for Legal Culture, 2016, 221 p.

### **3.1.17. Meeting with Mr Paweł KASPRZAK, leader of Obywatele RP (Citizens of Poland) (EP Liaison Office; 14:15-14:45)**

Mr KASPRZAK explained that 'Obywatele RP' is a civic pro-democracy movement, taking on the defence of citizens prosecuted for protesting against the Government. 'Obywatele RP'

has been involved in more than 700 court trials. So far, the movement had won all its cases brought on grounds of violence used against protesting citizens; this might not last.

Mr KASPRZAK explained that the authoritarian and populist turn witnessed in Poland was not merely due to so-called ‘shallow democratic traditions’, but was part of a global evolution, affecting the entire Europe, and posing a threat to European integrity. While reforms to the judicial system were long due, supporters generally support the seizing of power by the Government over the judiciary. This seeking of revenge over the opposition parties that were previously in government is a populist undertaking, generating a lot of support among half of the population, which is right-wing. The reform of the court system is just one expression of this undertaking; it can become much worse. Permanent psychological pressure is being exerted on opponents: today it concerns mostly threats, no jail sentences yet.

Mr KASPRZAK sought an explanation for the popularity of the ruling party’s identity politics in the crisis of democratic and judicial institutions, and the lack of credibility of the traditional political parties, whose record was not great. Nationalism is an easy, emotional answer to those problems, largely based on lies.

Obywatele RP is seeking to create a platform of civic society, with as new paradigm the need to explain politics to the people. The very low turnout rate for elections in Poland leads to a defective democratic legitimacy of the Parliament and the Government. The organization wants to organize European elections around civil EU values, not around the political divide currently dominating Polish politics.

According to the representatives of Obywatele RP, opinion polls would indicate that 56% of the population is in favour of the EU’s intervention in relation to the rule of law situation in Poland to defend the EU’s values; this is more than the electorate voting for the opposition parties. The organisation is considering ways to give people a voice in support of the European interventions (Article 7 TEU procedure and proceeding before the CJEU) in defence of checks and balances and the rule of law in Poland. In total, 80% of the voters is in favour of EU Membership. This clearly shows that the fear that too much pressure exerted by the EU on Poland as regards the rule of law situation could lead to a ‘Polexit’ is unfounded.

Asked by Ms SARGENTINI what sort of prosecutions protestors are facing, Mr KASPRZAK explained that the repressing was relatively mild: 90% of cases brought against protestors were referred to petty crime courts, 10% concerned criminal accusations. Fines would amount to 100 dollars for, for instance, shouting. Some accusations are ridiculous: shouting through a megaphone would ‘litter the environment’. However mild the punishment, for some people it is discouraging enough to give up on protesting. In more than 100 sentences, different judges declared the protestors not guilty, since they were exercising their constitutional right to protest. In the meantime, the Government is restricting the right to organise counter-demonstrations.

In his concluding remarks, the speaker emphasized the importance of the visit of the EP Delegation for the country: he called it a symbolic visit, with hopefully practical effects. He maintained that, if the country were not in the EU, it would be in Russia already.

*Materials:*

Obywatele RP, “*ObyPomoc*” Report, 11 April 2017-31 July 2018

**3.1.18. Meeting with Polish journalists to discuss media freedom (part 1) (EP Liaison Office; 14:45-16:30)**

The EP Delegation met with the following journalists:

- Mr Michał SZUŁDRZYŃSKI, Rzeczpospolita
- Mr Roman IMIELSKI, Gazeta Wyborcza
- Mr Łukasz LIPIŃSKI, Polityka
- Ms Agata KOWOLSKA, TOK FM

The first journalist stated that media freedom is under pressure in Poland. As in all countries, the traditional business model of the media is in difficulties; the Polish Government is taking advantage of that evolution. The press is asked to display certain headlines, and to hide others that are critical for the Government. State companies invite press connected to the Government to do big events for the ruling party. Ministries and courts are only buying newspapers connected to the Government. The main problem is that public money is spent on media without transparency or control by an independent authority. No objective factors are in play, such as readership or listeners.

A second journalist took the floor, currently hosting a popular radio show about law, with mostly lawyers as guests. It is significant that guests are asking not to mention their law firm, since law firms are afraid of losing contracts from the State. This is a form of self-censorship. Journalists increasingly face difficulties when they want to get in touch with parliamentarians: sometimes a certain pass is required, sometimes one-day passes are denied. Citizens and NGO members also experience difficulties to access the Parliament for conducting interviews or for watching debates. The video transmission only gives a partial view: filmed from above, it does not allow to identify the speakers; sometimes the Chairman turns off the microphone; citizens cannot ask questions to MPs (before, this used to always be possible).

The speaker went on to explain that coverage of events differed greatly between state-endorsed media and other media: demonstrations would be represented as if they were very small on the state news. This was not so bluntly the case before. Journalists are moreover not respected as journalists during demonstrations: they are barred from asking questions to the police. The Law on Public Information and the Press Law are not respected; citizens and journalists do not get access to information within the 14-days' time-limit laid down in the law.

A third journalist also denounced black and white reporting by state-endorsed media: the EU and Germany were always being portrayed as 'bad', the governing party would always do good. The ruling party accused the journalist's newspaper (the biggest one in the country and with Polish ownership) of being an enemy of Poland, of not being a Polish newspaper, but a 'Polish language newspaper'. A colleague was even accused of being German, and of bringing German propaganda in Poland, because the website on which he was publishing, Onet.pl, is owned by Springer. Advertisers, so important in the earning model of newspapers, are beginning to exercise caution in their advertising placement, not to upset the ruling party they may need at some point.

The journalist maintained that the public broadcasters are getting less and less audience, even among supporters of the ruling party, because they bring boring propaganda in Kremlin style. The same is true for print media close to the Government. Fake news is an everyday problem; it is incredible that the main producer of fake news is the public media. The Government is



claiming that 80% of the media is criticising them or is funded by foreign money. The Minister of Justice sued a newspaper for a commentary accusing the Government to want to create a mafia state. 50 to 80 court cases have been brought against journalists for critical reporting; this costs them a lot in terms of lawyer fees, while the Government is using public money to bring the cases.

Asked by Ms SARGENTINI whether the aforementioned pressure has already led to newspapers not publishing certain articles, the journalist answered in the negative. Another journalist cautioned against unconscious self-censorship: at some point, journalists are no longer aware of what they would have done in a 'normal' situation, without such constant psychological pressure. He thought there was definitely already a chilling effect.

As regards diversity of the press, another journalist maintained that in the radio landscape pluralism and competition are quite good; propaganda is not so big. The same can be said from daily newspapers. The picture is more diverse for the market of the weeklies. The biggest problem for the written press is that advertisement is stalling. Also the application of the law has changed: radio broadcasters are no longer allowed to expand their reach to other cities.

In conclusion, one of the journalists summed up the four main channels through which the Government tried to influence the media sector (despite a prevailing situation of pluralism):

1. Public accusations by politicians, such as that 'NGOs and press are financed by foreign agents' (Soros, Merkel): journalists may not dare to speak out anymore (chilling effects);
2. Regulation: the ruling party is talking about introducing restrictions on foreign capital in the TV sector, which would affect, for instance, the Discovery Channel; the ruling party is speaking of a renationalisation of the local press, which is often owned by German companies;
3. Administration: the Government has set up a 'Special Council' for the TV sector; some media are facing fines from the tax office of more than 20 million EUR; suddenly, irregularities in the tax cheque of critical media are being found;
4. Economic channel: state companies (which are strictly controlled by the Government, for the moment) are putting their advertising and hence are sending flows of money into public media only. The Government is consistently buying up media, as has been the case in Hungary.

One of the journalists recalled that the Leader of the ruling party vowed in the past to "bring Budapest to Warsaw". The reason why the Government has not touched the Media Law so far, is likely to be that the US have strongly warned against doing so, since the biggest TV broadcaster is in American hands. According to the journalist, one of the most important ways to stop destroying the rule of law in Poland is the Article 7 TEU dialogue initiated by the European Commission. He said not to believe in the fear cited by many politicians that the triggering of that procedure will in the end turn Poles against the EU and that Poland could follow the British example and leave the EU. Support for the EU among the population is too firm for that to happen. The fear would rather be that the Government is overdoing things to such extent that Poland could in the end be expelled from the EU.

The other journalists disagreed with that analysis: they were of the view that three years of observing unconstitutional changes by the Commission and the European Parliament had not made any difference. Article 7 TEU would never lead to the imposition of sanctions; the ruling party was well-aware of that. Their hopes were vested first and foremost in the CJEU; they said

however not to be able to predict how the Government would react after an eventual ruling. They thought the Government would mostly fear the financial consequences of CJEU rulings. It was the threat of an infringement case against the Polish Law on the Supreme Court before the CJEU that brought the Prime Minister to talk to First President Gersdorf of the Supreme Court.

The journalist, who had favoured the Article 7 TEU dialogue, said that some politicians had suggested that they would reject the rulings of the CJEU. In his view, the real ‘atomic weapon’ would be linking the European money to respect for the rule of law.

**3.1.19. Meeting with Polish journalists to discuss media freedom (part 2) (EP Liaison Office; 16:30-17:00)**

The EP Delegation met with the following journalist:

- Mr Piotr FALKOWSKI, Nasz Dziennik (‘Our Daily’)

The journalist explained that he is working for a catholic newspaper, the only one of the country, financed independently from the Government. The newspaper has a policy of not making its subscription numbers public, but the newspaper would be ranked fourth or fifth nationally. The journalist would not describe himself as pro-Government, since he was also critical of the Government. For instance, the Government was not making enough progress in legally protecting the life of unborn children. Sustainable development, particularly the elements of a multicultural society and protection of the environment, and education are important policy areas for the newspaper, where journalists are generally critical of the Government’s policies.

Ms SARGENTINI asked why he thought the Government was not delivering enough on those points, he said the reasons were twofold. Firstly, there is the international factor: the Government is under pressure of foreign forces, such as the European Commission, powerful international organisations and institutions in Europe and the US, and also commercial actors. Secondly, the Polish media, which are governed by liberal forces, pose a problem; they too put pressure on the Government.

Asked by Ms SARGENTINI whether and how the functioning of the newspaper had changed under this Government, the journalist mentioned several improvements. Nasz Dziennik gained better access to Members of the Government and of the Parliament, and to important officials, even if they were regularly being criticized in the newspaper. The newspaper also received more invitations to radio shows and TV programmes under this Government. Previously, the newspaper was excluded by public broadcasters; nowadays there is more pluralism. Before 2015, Nasz Dziennik did not get any advertisement from state-owned companies, for instance from the transport, energy or telecoms sector. Such advertisements are hugely important in the earning model of newspapers and are relevant for the newspaper’s readers. Since the new Government is in place, the situation has improved. The newspaper is now also being invited, along with other journalists, by the most important politicians for their international journeys, including European summits in Brussels. Prior to 2015, journalists of Nasz Dziennik almost never had such access to Poland’s top politicians.

Ms BERGERON told the journalists that they had spoken earlier to journalists critical for the Government, and that she had the impression that the situation was now reversed as compared to before 2015. The journalist stated that whereas it is true that the newspaper is more aligned to the position of the Government, it is important to present the readers with the different arguments in a conflict. Nasz Dziennik was trying to report, often using quotations, including on the Article 7 TEU procedure or other topical subjects like migration.

The journalist wished to add that there used to be problems with the freedom of speech before 2015: TV TRWAM was refused to obtain broadcast license for digital broadcasting, so it may have been excluded from media space. Mass protests and rallies took place in 2023 and 2014 in ca. 100 cities, including two main events in Warsaw, which where, according to Mr FALKOWSKI, each attended by more than 250,000 people. According to the journalist, it shows Poland has a great tradition of social resistance when freedom of speech is violated. Current protest of "Kod" or "Obywatele RP" movements are visibly smaller in their scale, he added.

Ms SPINELLI asked about links with the Catholic Church or Radio Maria. The journalist explained that there was no financial relation. Since the opinion of bishops mattered to the newspaper, they were reporting what bishops were saying, but they were not taking orders from them. The newspaper could be considered as a spiritual child of Radio Maria and they maintained good relations, however without legal ties.

When asked by Ms SARGENTINI about the Article 7(1) TEU procedure on the rule of law situation in Poland, the journalist expressed the view that the procedure was illegal and unjust and served other interests. Other questions were more important for the country than the judiciary, such as the question of the future of the EU and migration. He finished by saying that the Government's vision for the future of the EU is a good one.

#### 4. Key findings

The EP delegation would like to thank those representatives of the Polish Government, the Sejm and the Senate, political parties, judicial institutions, representatives of the OSCE/ODIHR, legal practitioners, journalists and representatives of civil society who met with the EP delegation for their time, availability and the many insights hence provided.

As mentioned above the EP delegation made all efforts to meet the widest possible range of governmental interlocutors and strongly regrets that many of these meetings have been denied or cancelled at the last moment.

The EP Delegation is firm in recognising that it is perfectly legitimate for the Polish authorities to pursue a thorough reform of the Polish judicial system and has listened very carefully to the legal explanations given by the authorities for the reforms undertaken.

The EP Delegation recalls that further to the historic accession of Poland to the EU, Polish judges also act as European judges with the duty to ensure a fair and impartial implementation of EU law.

After having heard all participants, the Delegation, with the exception of two of its seven Members, namely ECR Member Valdemar TOMAŠEVSKI and ENF Member Nicolas BAY, is concerned about the cumulative effects of the reform of the Polish judicial system carried out during the past three years (Constitutional Tribunal, ordinary courts, National Council of the Judiciary, Supreme Court), which seem to amount to a serious risk of a systemic threat to the rule of law in Poland.

The Delegation is concerned, among other elements, about:

- The composition and functioning of the Constitutional Tribunal; the non-publication of certain judgments of the Constitutional Tribunal;
- The new law reforming the ordinary court system, and the large amount of dismissals of presidents of the lower courts by the President;
- Continuing, systemic and targeted attacks on judges, through the initiation of disciplinary proceedings against judges who speak out against the reforms and/or who refer preliminary questions to the CJEU in line with the EU Treaties, and through the transfer of critical judges between courts or divisions of courts;
- The accumulation of powers in combining the offices of Minister of Justice and Prosecutor General, i.e. the political influence of the Minister of Justice over the public prosecution offices, which were previously separated from the government;
- The composition and powers of the new National Council of the Judiciary (election regime, termination of office of members) and political influence over the judiciary;
- The new retirement regime for Supreme Court judges, which lead to the office term of the President of the Supreme Court being cut short prematurely despite a six-year term of office being enshrined in the Constitution, and to putting in total 27 out of 72 sitting judges at risk of being forced to retire;<sup>6</sup>
- The discretionary power of the President and of the Minister of Justice to prolong the mandate of judges, respectively of the Supreme Court and of the ordinary courts, who

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<sup>6</sup> CJEU, Case C-619/18 R, *Commission v. Poland*, [Decision](#) of 19 October of the Vice-President of the Court of Justice, ordering the Republic of Poland to suspend the effects of the Judiciary Reform Act.

have reached the retirement age, without giving reasons nor possibility for the judges to appeal against such decisions;

- The legal uncertainty the extraordinary appeal procedure (newly created chamber of the Supreme Court) could bring along for final judgments;
- The legal uncertainty that could surround future elections, for lack of independent judicial oversight by the Supreme Court;
- The lack of public debate and consultation of stakeholders during the legislative process;
- The deteriorating conditions for the media to operate (e.g. access to Government and Parliament sources), despite relative media freedom; the highly polarized media landscape;
- The deteriorating working conditions for NGOs (e.g. reduced financing, blurred tendering procedures, increased administrative burden, reduced consultation), despite a still thriving civil society;
- The problems women are facing, especially in certain regions, in enforcing basic reproductive and health rights: a lack of access to information, contraception, the morning after pill, pre-natal tests, medical imaging, abortion etc.
- The lack of constructive dialogue with international organisations, the lack of implementation of the Venice Commission's recommendations as well as of the Recommendations from the European Commission within the Rule of Law Framework.

In sum, the EP Delegation, with the exception of ECR Member Valdemar TOMAŠEVSKI and ENF Member Nicolas BAY, is concerned about the core principles of the Rule of Law being breached or at risk of being breached, including the principles of separation of powers, legality, legal certainty, prohibition of arbitrariness of executive powers, independent and impartial courts, and effective judicial review and therefore concurs with the analysis of the European Commission in finding that **there is a clear risk of a serious breach of the rule of law by the Polish authorities.**

A hearing was held in the LIBE Committee on 20 November to which the Polish authorities unfortunately declined participating.

The Chair of the EP delegation will present this mission report before the LIBE Committee on 3 December 2018.

## **ANNEXES**

ANNEX 1: Draft programme of the Rule of Law mission to Poland (19-21 September 2018)

ANNEX 2: List of participants

ANNEX 3: CVs of interlocutors

ANNEX 4: Decision of the Conference of Presidents

ANNEX 5: Documents received from the Polish Authorities

- Letter from the Prime Minister of the Republic of Poland, Mr MORAWIECKI, to the Chair of the Delegation, Mr MORAES, on his non-availability to meet the delegation in Warsaw (dated 18 September and received on 25 September);
- PowerPoint presentation given during the expert seminar at the Ministry of Foreign Affairs (Friday 21 September 2018);
- Letter from the Polish Ambassador, Mr SADOŚ, to the Chair of the Delegation, Mr MORAES, in reaction to the draft mission report (dated 23 November and received on 28 November 2018)
- Reply from Mr MORAES, Chair of the Delegation, to Mr SADOŚ, Polish Ambassador on 30 November 2018



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa  
Europski parlament Parlamento europeo Eiropas Parlaments Europs Parlamentas Európai Parlament  
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

## **Committee on Civil Liberties, Justice and Home Affairs (LIBE)**

### **Mission to Warsaw, Poland**

**19-21 September 2018**

#### **Draft Programme**

##### **Wednesday, 19 September 2018**

##### **Individual transfer from the airport to the hotel**

*(Address: Novotel Warszawa Centrum, ul. Marszałkowska 94, 00-510 Warszawa, Poland)*

##### **Wednesday, 19 September 2018**

- |                      |   |
|----------------------|---|
| <b>13:30</b>         | <b>Meeting in the lobby of the hotel &amp; bus transfer to the meeting venue at the European Parliament's Liaison Office (EPLO) in Warsaw</b> <i>(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)</i> |
| <b>13:45 - 14:45</b> | Meeting with <b>Mr Adam BODNAR</b> , Polish Ombudsman, Office of the Commissioner for Human Rights<br><i>(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)</i>   |
| <b>14:45 - 15:45</b> | [Provisional slot in case of confirmation of remaining meetings requested at political level <sup>1</sup> ]   |
| <b>15:45 - 16:00</b> | <i>Coffee break</i>   |
| <b>16:00 - 17:00</b> | Meeting with <b>Professor Andrzej RZEPLIŃSKI</b> , former President of the Constitutional Tribunal 2010 - 2016  |

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<sup>1</sup> The Chair requested meetings with President Andrzej DUDA, Prime Minister Mateusz MORAWIECKI and Minister of Justice Zbigniew ZIOBRO (request to Polish Permanent Representative of 19 July, 11 September and 13 September, direct letters by Chair sent on 14 September) - no feedback from President DUDA and Minister ZIOBRO to date. Reply on behalf of PM MORAWIECKI received on 19 September informing of his non-availability.

*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*

- 17:00 - 18:30** Meeting with **Ms Draginja NADAŽDIN**, Director of Amnesty International Poland, **Ms Ewa KULIK-BIELIŃSKA**, Director of the Stefan Batory Foundation, **Mr Maciej NOWICKI**, Deputy President of the Helsinki Foundation for Human Rights  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 18:30 - 19:30** Meeting with **Ms Agnieszka DZIEMIANOWICZ**, Black protest activist and **Ms Krystyna KACPURA**, Executive Director of the Federation for Women and Family Planning  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 19:30** *Bus transfer to the restaurant*
- 20:00** Dinner with briefing by **Mr Marek PRAWDA**, Head of the Commission Representation in Warsaw  
*(Address: xxx)<sup>2</sup>*

#### **Thursday, 20 September 2018**

- 08:30** **Meeting in the lobby of the hotel & bus transfer to the Sejm**
- 08:30 - 09:30** **Meeting with representatives of the Sejm**  
*(Address: Sejm, ul. Wiejska 4/6/8, 00-902 Warsaw (Nowy Dom Poselski - Building F, conference room, ground floor))*
- **Mr Stanisław PIOTROWICZ**, Chairman of the Justice and Human Rights Committee
  - **Mr Ryszard TERLECKI**, Deputy Marshal
- 09:30 - 10:00** *Bus transfer to the National Council of the Judiciary*
- 10:00 - 11:00** **Meeting with representatives of the National Council of the Judiciary**  
*(Address: National Council of the Judiciary, ul. Rakowiecka 30, 02-528 Warsaw, access from Aleja Niepodległości only, entrance C/Plenary room, 1st floor)*
- **Mr. Leszek MAZUR**, Chairman, Judge of the Regional Court in Częstochowa

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<sup>2</sup> Venue tbc, individual expenses.



- **Mr. Dariusz DRAJEWICZ**, Vice-Chairman, Judge of the District Court Warszawa-Mokotów in Warszawa
- **Mr. Wiesław JOHANN**, Vice-Chairman, Judge Emeritus of the Constitutional Tribunal
- **Mr. Marek JASKULSKI**, Member of the Council, Judge of the District Court Poznań-Old Town in Poznań
- **Ms. Teresa KURCYUSZ-FURMANIK**, Member of the Council, Judge of the Voivodship Administrative Court in Gliwice
- **Mr. Maciej MITERA**, Member of the Council and Spokesman, Judge of the District Court Warszawa-Śródmieście in Warsaw

<b>10:50 / 11:00</b>	<i>Bus transfer to the National office of Platforma Obywatelska</i>
<b>11:00 - 11:45</b>	<b>Meeting with leaders of main political parties<sup>3</sup>:</b> <i>(Address: National office of Platforma Obywatelska, ul. Wiejska 12A, 00-001 Warsaw, conference room 4th floor)</i> <ul style="list-style-type: none"> <li>- Grzegorz SCHETYNA (Platforma Obywatelska)</li> <li>- Katarzyna LUBNAUER (Nowoczesna)</li> <li>- Marek SAWICKI representing party leader Władysław Kosiniak-Kamysz (Polskie Stronnictwo Ludowe)</li> </ul>
<b>11:45 - 12:00</b>	<i>Bus transfer to the Constitutional Tribunal</i>
<del><b>12:00 - 13:00</b></del>	<del><b>Meeting with representatives of the Constitutional Tribunal</b></del> <del><i>(Address: Constitutional Tribunal, Aleja Jana Chrystiana Szucha 12A, 00-918 Warsaw)</i></del> <hr/> <del> <ul style="list-style-type: none"> <li>- <b>Mr. Andrzej ZIELONACKI</b>, Judge of the Constitutional Tribunal</li> <li>- <b>Mr. Jarosław WYREMBAL</b>, Judge of the Constitutional Tribunal</li> <li>- <b>Mr. Marcin KOMAN</b>, Head of the Office of the President of the Constitutional Tribunal</li> <li>- <b>Mr. Dominik TYLKA</b>, Office of the President of the Constitutional Tribunal</li> <li>- <b>Mr. Bartosz SKWARA</b>, Advisor to the President of the Constitutional Tribunal<sup>4</sup></li> </ul> </del>
<b>13:00 - 13:45</b>	<i>Lunch break</i>
<b>13:45 - 14:00</b>	<i>Bus transfer to EP Liaison office</i>
<b>14:00 - 15:00</b>	<b>Meeting with representatives of “Wolne Sady” (Free Courts)<sup>5</sup>: Mr Michał WAWRYKIEWICZ</b> , lawyer and <b>Ms Paulina KIESZKOWSKA-KNAPIK</b> , lawyer <i>(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)</i>

<sup>3</sup> The Chair has also requested a meeting with Mr Kaczyński (PiS) (request to PL Permanent Representative on 19 July, 11 September and 13 September), letter Chair - Mr Kaczyński sent on 14 September - no feedback to date.

<sup>4</sup> The meeting was cancelled on request of the Constitutional Tribunal on 20 September, late morning.

<sup>5</sup> Suggested by the Commission's office in Warsaw.

- 15:00 - 15:30**      *Bus transfer to the Senate*
- 15:30 - 16:30**      **Meeting with representatives of the Senate:**  
*(Address: Sejm/Senate, ul. Wiejska 4/6/8, 00-902 Warsaw/(Nowy Dom Poselski - Building F, conference room, ground floor))*
- **Mr. Michał SEWERYŃSKI**, Deputy Marshal, Senate
  - **Mr. Stanisław GOGACZ**, Chairman of the Legislation Committee, Senate
  - **Mr. Robert MAMAŹOW**, Chairman of the Human Rights, the Rule of Law and Petitions Committee, Senate
- 16:30 - 17:00**      *Bus transfer to the Supreme Court*
- 17:00 - 18:00**      Meeting with **Ms Małgorzata GERSDORF**, First President of the Supreme Court of the Republic of Poland, **Mr Dariusz ZAWISTOWSKI**, President of the Civil Chamber and **Ms Katarzyna GONERA**, judge at the Supreme Court and Head of division of the Labour Law and Social Security Chamber  
*(Address: Supreme Court, plac Krasińskich 2/4/6, 00-001 Warszawa)*
- 18:00 - 18:15**      *Bus transfer to meeting venue European Parliament office in Warsaw*
- 18:15 - 19:15**      Meeting with **Professor Krystian MARKIEWICZ**, President of the Polish Judges' Association "Iustitia"  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 19:15**                *Bus transfer back to the hotel*  
  
*Dinner (individual arrangements)*

**Friday, 21 September 2018**

- 08:00**                      **Meeting in the lobby of the hotel & bus transfer to the meeting venue OSCE/ODIHR**
- 8:30 - 9:30**                Meeting with **Mr Marcin WALECKI**, Head of the Democratization Department and **Ms Andrea HUBER**, Deputy Chief, Rule of Law Unit, Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)  
(Address: OSCE/ODIHR, ul. Miodowa 10, Warszawa)
- 9:30 - 10:00**              *Bus transfer to the Ministry for Foreign Affairs*
- 10:00 - 11:00**            **Working breakfast at the Ministry for Foreign Affairs**  
(Address: Ministry for Foreign Affairs, Aleja Jana Chrystiana Szucha 23, 00-580 Warsaw/Giedroyc room, 1st floor)
- **Mr. Jacek CZAPUTOWICZ**, Minister of Foreign Affairs
  - **Mr. Konrad SZYMAŃSKI**, Secretary of State for European Affairs, Ministry of Foreign Affairs
  - **Mr. Marek SUSKI**, Secretary of State, Head of the Prime Minister's Political Cabinet
  - **TBC: Mr. Łukasz PIEBIAK**, Deputy Minister, Ministry of Justice
- 11:00 - 12:30<sup>6</sup>**        **Expert Seminar at the Ministry for Foreign Affairs**  
(Address: Ministry for Foreign Affairs, Aleja Jana Chrystiana Szucha 23, 00-580 Warsaw/Ignacy Paderewski room, ground floor)
- **Mr. Konrad SZYMAŃSKI**, Secretary of State for European Affairs, Ministry of Foreign Affairs
  - **Mr. Piotr RYCHLIK**, Director, Legal and Treaty Department, Ministry of Foreign Affairs
  - **Mr. Paweł JABŁOŃSKI**, Deputy Director, International Projects Coordination Department, Chancellery of the Prime Minister
  - **Mr. Michał MAZUR**, Deputy Director, European Policy Department, Ministry of Foreign Affairs
  - **TBC: Representatives of the Ministry of Justice**
- 12:30 - 12:45**            *Bus transfer to the European Parliament's Liaison Office in Warsaw (Address: ul. Jasna 14/16 a, 00-041 Warszawa)*
- 12:45 - 13:30**            **Press conference<sup>7</sup>**  
(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)

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<sup>6</sup> Subject to communication of detailed agenda.

<sup>7</sup> Organized by EPLO.

- 13:30 - 13:45**      *Coffee break with sandwiches*
- 13:45 - 14:15**      Meeting with President of the Board of the Ordo Iuris Institute,  
**Dr Tymoteusz Zych and Ms Karina Walinowicz**  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 14:15 - 14:45**      Meeting with **Mr Paweł KASPRZAK**, leader of OBYWATELE RP  
(Citizens of Poland)  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 14:45 - 16:30**      Meeting with **Polish journalists** to discuss media freedom (part 1):  
- **Mr Michał SZUŁDRZYŃSKI**, Rzeczpospolita  
- **Mr Roman IMIELSKI**, Gazeta Wyborcza  
- **Mr Lukasz LIPIŃSKI**, Polityka  
- **Mrs Agata KOWALSKA**, TOK FM  
*(Address: EP Liaison office, ul. Jasna 14/16 a, 00-041 Warszawa)*
- 16:30 - 17:00**      Meeting with **Polish journalists** to discuss media freedom (part 2):  
- **Mr Piotr FALKOWSKI**, Nasz Dziennik
- 17:00**                *Direct bus transfer to the airport or individual arrangements*

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Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa  
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament  
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

## COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

# Mission to Poland on Rule of Law 19 - 21 September 2018

Draft list of participants by protocol order

### MEMBERS OF THE EUROPEAN PARLIAMENT

Nr	Name	Group <sup>1</sup>	Full Member/ Substitute	Country
1.	<b>Claude MORAES (Head of mission)</b>	S&D	F	UK
2.	Valdemar TOMAŠEVSKI	ECR	F	LT
3.	Judith SARGENTINI	Greens/ EFA	F	NL
4.	Frank ENGEL	EPP	F	LU
5.	Nicolas BAY	ENF	S	FR
6.	Barbara SPINELLI	GUE/NGL	S	IT
7.	Joëlle BERGERON	EFDD	S	FR

### STAFF OF THE POLITICAL GROUPS

Nr	Name	Group
1.	Martina NEMCOVA	EPP
2.	Laura PEARSON	S&D
3.	Lide IRUIN IBARZABAL	GUE/NGL
4.	Magda MAJERCZYK	ECR
5.	Aleksejs DIMITROVS	Greens/ EFA
6.	Bastien RONDEAU	ENF
7.	Gilles ARNAUD	EFDD
8.	Cristina CARTES	ALDE

<sup>1</sup> ALDE Alliance of Liberals and Democrats for Europe  
EFDD Europe of Freedom and Direct Democracy  
EPP Group of the European People's Party (Christian Democrats)  
Greens/EFA Greens- European Free Alliance  
GUE/NGL European United Left - Nordic Green Left  
S&D Group of the Progressive Alliance of Socialists and Democrats in the European Parliament



## **STAFF OF THE EP SECRETARIAT**

<b>Nr</b>	<b>Name</b>	<b>Function</b>
1.	Antoine CAHEN	Head of Unit (LIBE)
2.	Marlies DESOMER	Administrator (LIBE)

## **INTERPRETATION**

<b>Nr</b>	<b>Name</b>	<b>Language</b>
1.	Elena CARTER E	EN
2.	Alexia WHITING A	EN
3.	Mathieu LISOWSKI M	FR
4.	<b>Geraldine WOJCIK G</b>	FR
5.	Anna CHWEDCZUK-SZULC A	PL
6.	Dagmara WROBEL D	PL

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**EPLO Warsaw**

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# **LIBE Mission to Poland 19-21 September 2018**

## **CV Summaries<sup>1</sup> per time of meetings**

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<sup>1</sup> Sources : Internet sources including wikipedia, EP office in Warsaw, Commission representation in Warsaw



## Wednesday, 19 September 2018

**Adam BODNAR**, Polish Ombudsman, Office of the Commissioner for Human Rights



Adam Bodnar was born on 6 January 1977 in Trzebiatów.

He graduated from the faculty of Law and Administration at the University of Warsaw and also from LL.M. programme in the field of comparative constitutional law at Central European University in Budapest. In 2006 he was awarded PhD degree at University of Warsaw in the field of constitutional law. His PhD thesis entitled: “Multi-level society in the European constitutional sphere” was awarded with honourable mention in the competition organized by Przegląd Sejmowy (Parliamentary Review).

In 2004-15 Adam Bodnar worked for Helsinki Foundation of Human Rights, firstly as a co-founder and coordinator of Precedent Cases Programme and then as a head of legal department and vice-president of the Management Board. He is also an expert in the Agency of Fundamental Rights of European Union. In 2013-2014 Bodnar was a member of the board of directors of the United Nations Fund for Victims of Torture. In 2001-2004 he worked as a lawyer in Weil, Gotshal & Mangers law firm. Since 2006 he has been giving lectures at the law and administration department of the University of Warsaw. Until the time of assuming the post of Ombudsman, Adam Bodnar, PhD cooperated with various non-governmental organizations, including Panaptykon Fund (chairman of the Foundation Council), ClientEarth Polska (member of the Programme Council), Prof. Zbigniew Hołda Association (co-founder and the member of the Management Board). He was also a member of the Civic Legislation Forum operating at Batory Foundation and of the editorial team of [kulturaliberalna.pl](http://kulturaliberalna.pl).

In 2011 he was awarded with the Tolerance Prize by the Polish LGBT organizations. In 2013 he received a scholarship within the scope of German Marshall Memorial Fellowship programme.

With an approval of 67 non-governmental organizations in 2015 he was notified for the post of Ombudsman by Democratic Left Alliance Parliamentary Club and by independent members of the parliament, and also by Civic Platform Parliamentary Club. The Sejm appointed him at this post on 24 of July 2015 and on 7 August 2015 the Senate of the Republic of Poland approved this choice. Then, on 9 September 2015 the Sejm took his oath.

Adam Bodnar is an author of numerous scientific publications in the field of law.

## **Professor Andrzej RZEPLIŃSKI**, former President of the Constitutional Tribunal 2010 - 2016



Andrzej Rzepliński (born November 26, 1949 in Ciechanów) is a Polish lawyer, Professor of Jurisprudence, human right expert, member of International Helsinki Federation for Human Rights, a judge of the Polish Constitutional Tribunal from 2007 and its president from 2010 to 2016.

Andrzej Rzepliński was born in Ciechanów as the son of Helena and Klemens, who ran a farm in nearby Przązew. He graduated in 1971 at the Faculty of Law and Administration of the University of Warsaw. In 1978 he obtained a doctoral degree in the field of criminology, and in 1990 a postdoctoral degree (dissertation titled Judiciary in People's Poland, Between Availability and Independence). In 2000, he received the academic title of professor. Professionally associated with the University of Warsaw, where he came to the position of full professor. He also became the head of the Department of Criminology and Criminal Policy at the IPSiR, he was the dean of the Faculty of Applied Social Sciences and Resocialisation of the University of Warsaw.

Until 1981 he belonged to the Polish Communist Party (PZPR), from which he was removed. At the end of the 1970s he was the second secretary of the POP in the Institute of Social Prevention and Resocialisation of the University of Warsaw. In the 1980s, he belonged to Solidarity. He was a participant in the work of the Citizens' Center for Legislative Initiatives. He is the author of numerous scientific publications.

A member of the Helsinki Committee in Poland, he assumed the position of the secretary of the board of the Helsinki Foundation for Human Rights as well as a member of the program council of the Precedent Matters Program in this foundation. He acted as a UN expert, the Council of Europe and the OSCE. He specializes in the field of criminology, criminal law and human rights. As a parliamentary expert, he cooperated on the Act on the Institute of National Remembrance, and later advised the IPN president Leon Kieres and the coordinator for special services Janusz Pałubicki. In 1998, he was a candidate for the function of a general inspector of personal data protection, the 3rd term Sejm was not elected to this position [3].

In the years 1996-2001 he was a member of the Program Council, and since 2004 the Consultative Council of the Press Freedom Monitoring Center. In 2005, he was candidate, on the recommendation of PO, to the position of the ombudsman in connection with the expiration of the term of office of Andrzej Zoll. In the first voting in June, he did not receive the Sejm's support; Submitted again in July, he was recommended by the Sejm, but his candidacy was rejected in the same month by SLD-dominated Senate.

In 2006 he was a candidate for a judge of the Constitutional Tribunal, he was not elected to this position by the Sejm.

In December 2007 with recommendation of Civic Platform he was elected as a member of Constitutional Tribunal of the Republic of Poland and took the oath of office on December 19, 2007. In December 2010 he became president of the Tribunal. In December 2016 he was succeeded as a judge of the Tribunal by Michał Warciński and as a president of the Tribunal by Julia Przyłębska.

He was generally viewed as belonging to the liberal wing of the Tribunal. Before becoming a judge, Rzepliński spent a considerable portion of his legal career as a scholar, professor ordinarius at University of Warsaw and dean of Faculty of Applied Social Sciences and Resocialization.

He received the Knight's Cross of the Order of Polonia Restituta (1997), Commander's Cross of Order of the Lithuanian Grand Duke Gediminas (Lithuania, 2013), Pro Ecclesia et Pontifice (Vatican, 2015), Kisiel Prize (2015) and an honorary Doctor of Laws degree from University of Osnabrück (2016).

He has two daughters with lawyer Irena Rzeplińska, whom he married in 1971.

## **Ms Draginja NADAŽDIN**, Director of Amnesty International Poland



Draginja Nadazdin - comes from Mostar in Herzegovina (former Yugoslavia). When she was seventeen, she experienced a war in ex-Yugoslavia and fled in exile. A graduate of ethnology at the University of Warsaw, she currently teaches there at the Department of Ethnology and Cultural Anthropology.

## **Ms Ewa KULIK-BIELIŃSKA**, Director of the Stefan Batory Foundation, Communication and Development Director



After studying in 1976-1980, she graduated in 1987 with English Philology at the Jagiellonian University in Krakow. In the years 1977-1980 she was a spokeswoman of the Student Union Committee of Solidarity in Cracow, she ran a library of publications on the second circulation, she was also a co-organizer of lectures at the Flying University. In early 1979, she became the editor of the independent student magazine "Indeks". In 1980, she moved to Warsaw.

In September 1980 she became a member of NSZZ "Solidarność". She edited the Solidarity newsletter of the Mazowsze Region, and then the periodical Independence, and in March 1981 became the secretary of the editorial office of this magazine. After the introduction of martial law she was hiding, organizing the structures of the underground Solidarity. She was a leading co-worker and later a member of the Regional Executive Commission of NSZZ "Solidarność" Region Mazowsze and the Provisional Coordination Committee. Together with Helena Łuczywo and Zbigniew Bujak, she co-organized the nationwide headquarters of the underground.

She was arrested in May 1986, she was released in September of the same year under the amnesty.

In the years 1988-1989 she was on a scholarship in the United States. After returning to Poland, she ran the correspondent office of the journal *The Independent* in Poland (1989-1991).

After 1991 she was involved in the activities of non-governmental and industry organizations, ie the Association of Polish Translators (from 1992), PEN Club (from 1995, in 1997-1999 member of the board), Polish Writers' Association (since 1996), Public Benefit Works Council. From 2000, she was the director of information and development at the Fundacja im. Stefan Batory. In 2010, she was appointed the director of this foundation.

In 2006, President Lech Kaczyński decorated Ewa with the Commander's Cross of the Order of Polonia Restituta for her outstanding contribution to the independence of the Republic of Poland.

**Ms Agnieszka DZIEMIANOWICZ-BAK**, Black protest activist.



Agnieszka Dziemianowicz-Bąk (born on January 20, 1984 in Wrocław) - Polish social activist and politician, member of the Board of the National Party "Razem" (Together). From 2017, she represents "Razem" in a Pan-European movement Diem founded by Yanis Varoufakis.

**Ms Krystyna KACPURA**, Executive director of the Federation for Women and Family Planning (*Federacja na rzecz Kobiet i Planowania Rodziny*).



Social activist, women's rights defender and executive director of the Federation for Women and Family Planning. Involved in protests around government and civic projects to tighten abortion laws.

# **Marek PRAWDA**, Head of the European Commission Representation in Poland



Born: 1 October 1956 in Kielce, Poland

## **Education:**

1975-1979 economic studies, University of Leipzig

1979-1990 PhD studies, Institute of Philosophy and Sociology , Polish Academy of Science

1984        PhD degree in sociology of work

1987-1989 scholarship, University of Hamburg

## **Professional background:**

1990-1992 Department of German Studies, Institute of Political Studies, Polish Academy of Science

1992-1998 I secretary, Counsellor, Counsellor-Minister, chargé d'affaires, Embassy of Poland in Berlin, Germany

1998-1999 Deputy Director, Department of Western Europe, Ministry of Foreign Affairs

1999-2001 Director, Department of Western Europe, Ministry of Foreign Affairs

2001        Director of the Secretariat of the Minister, Ministry of Foreign Affairs

2001-2005 Ambassador Extraordinary and Plenipotentiary of Poland to Sweden

2005-2006 Director of the Secretariat of the Minister, Ministry of Foreign Affairs

2006-2012 Ambassador Extraordinary and Plenipotentiary of Poland to Germany

2012-2015 Permanent Representative of Poland at the European Union

Since April 2015 Head of the Representation of the European Commission in Poland

**Thursday, 20 September 2018**

**Stanisław PIOTROWICZ**, Chairman of the Justice and Human Rights Committee, Sejm



For many years working as a prosecutor during communist time. From 1978 he belonged to the Polish Communist Party (PZPR). He was a member of the PZPR executive office at the Voivodship and District Prosecutor's Office in Krosno. During martial law he was the author of the accusation against the opposition activist, accused of distributing underground publications.

After 1990 he continued working as the prosecutor.

In the parliamentary election in 2005 and 2007, he was elected a senator of the Law and Justice Party (PIS). He also represented the Senate in the National Council of the Judiciary. In the 2001 and 2015 elections, he successfully applied for a parliamentary election.

**Ryszard Iwon TERLECKI**, Parliamentary Caucus Head of the Law and Justice party



Terlecki, a historian and professor of humanities, lectures at the Pontifical University of John Paul II. He is a Member of the Sejm, serving since 2007

He is the son of the writer and journalist Olgierd Terlecki and his wife Janina. In his youth, he was a participant in the hippie movement and one of the precursors of this youth subculture in Poland. He was known in the environment under the pseudonym *Pies*. He is married twice, has three children from his first marriage.

Ryszard Iwon Terlecki is a Polish politician, the Parliamentary Caucus Head of the Law and Justice party. Terlecki, a historian and professor of humanities, lectures at the Pontifical University of John Paul II. He is a Member of the Sejm, serving since 2007.



## **Grzegorz SCHETYNA**, Leader of Civic Platform political party (Platforma Obywatelska)



Polish politician who has been Leader of Civic Platform since January 2016. He has served as Minister of Foreign Affairs of Poland from 2014 to 2015, Marshal of the Sejm from 2010 to 2011, Acting President of Poland 2010, Deputy Prime Minister of Poland from 2007 to 2009 and Minister of the Interior and Administration 2007 to 2009. He has been a Member of the Sejm for Kielce since 2005.

### **Marshal of the Sejm, 2010–2011**

Following Bronisław Komorowski's victory in the 2010 presidential election, Schetyna was nominated as the Civic Platform's candidate to succeed the President-elect as the Marshal of the Sejm.

On 8 July he was elected Marshal of the Sejm and thus assumed the post of the Acting President of Poland. Schetyna served as the interim head of state until Komorowski's inauguration on 6 August 2010.

Schetyna ceased being Sejm Marshal on 8 November 2011

Between 2011 and 2014, Schetyna served as chairman of the Committee on Foreign Affairs.

Minister of Foreign Affairs, 2014–2015 under the government of Ewa Kopacz.

## **Katarzyna LUBNAUER**, leader of the Modern political party (Nowoczesna)

A Polish politician, mathematician and academic teacher. She is a member of the Polish Parliament and since 2017, the leader of the liberal Modern (*Nowoczesna*) political party.



In 1993 she worked for the Democratic Union and in 1994, the Freedom Union where she was one of the local leaders of the party in Łódź. Between 1998–2002, she was a member of the Łódź city council. In 2001, she was one of the candidates for the head of Freedom Union in Łódź. She was a member of the last General Board of the Freedom Union and in 2005 she was one of the leaders of the newly reformed Democratic Party – [demokracyi.pl](http://demokracyi.pl). She unsuccessfully stood for election to the Sejm in 2001 and 2005.

She published articles in the *Liberté!* magazine and was one of the organizers of the Festival of Science, Technology and Arts in Łódź. In 2015, together with Leszek Jażdżewski, she was one of the initiators of the *Secular School* campaign, which aimed at cutting state funding to religious education classes in public schools across Poland.

During the Polish parliamentary elections in 2015, as a candidate of the Modern political party, she won a seat in the Sejm running from the first position on the party's election list in the Łódź constituency. She received a total of 18 549 votes. In 2016, she was appointed deputy chairman of the party, and from January to May 2017 she was its spokesperson. In April the same year, she also assumed the position of the chairperson of the parliamentary group of the Modern party. On 25 November 2017, during the party's congress in Warsaw, she was elected the leader of the Modern party defeating in a close vote its original founder Ryszard Petru. On 9 January 2018, she was replaced by Kamila Gasiuk-Pihowicz as the chairperson of the Modern party's parliamentary group.

## **Władysław KOSINIAK-KAMYSZ**, Leader of the Polish People's Party (Polskie Stronnictwo Ludowe)



In 2011-2015 minister of labor and social policy, from 2015 president of the Polish People's Party and member of the Sejm.

## **Professor Krystian MARKIEWICZ**, President of Polish Judges' Association "Iustitia"



President of Stowarzyszenie Sędziów Polskich „Iustitia” (Polish Judges’ Association „Iustitia”) and President of Silesian Department in Katowice, member of the Board of Polish Judges’ Association – 2010-2013. Judge in Regional Court in Katowice, assistant professor in Civil Procedure Department of Law and Administration Faculty of Uniwersytet Śląski (Silesian University) member of Voluntary Codification Commission, member of the permanent team at the Codification Commission for Civil

Procedure assisting the Minister of Justice until the termination of the Commission, editor-in-chief of Kwartalnik SSP „Iustitia”, member of editorial boards of „Polski Proces Cywilny” (Polish Civil Proceedings), „ADR. Arbitraż i Mediacja” (ADR. Arbitration and Mediation), lecturer and author of several dozen of publications on civil proceedings and constitutional law.



## **Michał SEWERYŃSKI**, Deputy Marshal at the Senate



Michał is a professor of the University of Łódź. Doctor honoris causa of the University of Lyon . Expert on Polish and international labour law. The author of about 130 scientific publications and reports at international congresses. Visiting professor at universities in France, Canada, Switzerland, Spain and Japan. Between 2006 and 2007, Minister of Science and Higher Education in Poland.

A member of Polish and foreign scientific societies. Member of the Papal Council for Secular Affairs, member of the Legislative Council at the Chairman of the Council of Ministers, and Deputy Chairman of the Government Labour Law Reform Commission. Former Rector of the University of Łódź, former Chairman of the Conference of Rectors of Polish Universities. A Knight of the Order of Polonia Restituta and of Palmes Academiques (France), Pro Ecclesia et Pontifice. Honorary Consul of France in Łódź.

He is married, with two children.

## **Stanisław GOGACZ**, Chairman of the Legislation Committee, Senate Lawyer, local politician.



He is a member of NSZZ "Solidarność", the Pilsudski Union and the Association of Graduates and Friends of the Law Faculty of the Catholic University of Lublin.

In the Senate he was the deputy chairman of the Legislative Committee and a member of the Emigration and Poles Abroad Committee. He worked in the Committee on Emigration and Communications with Poles Abroad, the Legislative Committee and the Health Commission. He belongs to the Law and Justice Party (PIS).

## **Robert MAMAŹTOW**, Chairman of the Human Rights, the Rule of Law and Petitions Committee, Senate



He is a graduate of the Vocational College with a general construction profile.

For his activities in NSZZ "Solidarność" he was interned and then sentenced to 2 years imprisonment. In 1988, he became involved in the construction of Solidarity structures.

In 2008 he was awarded the Officer's Cross of the Order of Polonia Restituta by President Lech Kaczyński. In the Senate, he was a member of the Human Rights, the Rule of Law and Petitions Committee and the Family Committee, Senior and Social Policy.

He belongs to the Law and Justice Party.

## **Dariusz ZAWISTOWSKI**, President of the Supreme Court of the Republic of Poland



Lawyer, judge, from 2015 to 2018 chairman of the National Council of the Judiciary, from 2016 President of the Supreme Court chairing the Civil Chamber.

In January 2018, he resigned as chairman of the National Council of the Judiciary, preceding the entry into force of the provisions of the amendment to the Act on the National Court Register as legislated by the new government.

According to the Presidential Office of Andrzej Duda, Dariusz Zawistowski is, as from 12 September 2018, acting as the First President of the Supreme Court. Dariusz Zawistowski himself, in response to this information, stated that in his opinion Małgorzata Gersdorf was the First President of the Supreme Court.

## **Katarzyna GONERA**, judge at the Supreme Court



Presides in the Labour Law and Social Security Chamber of the Supreme Court  
Specialist in the field of anti-discrimination law.

## **Małgorzata GERSDORF**, First President of the Supreme Court of Poland



Polish lawyer and judge who currently serves as the First President of the Supreme Court of Poland, a position she has held since 2014. She graduated from the University of Warsaw with a law degree in 1975, and obtained a doctorate degree in 1981. She became a professor for the University of Warsaw in 1992, served as Vice-Rector of the University in 2005, and became head of the Law Department in 2008.

Gersdorf was part of the Solidarity movement in the 1980s, and worked in the Supreme Court Office of Jurisprudence and the Office of Supreme Court Analysis in the 1990s. In 1989, after the new post-communist government took over, she was appointed to the Social Conciliation Commission, which helped to get political prisoners back in the workforce. She served as a legal advisor to the Supreme Court, and in 2008 was nominated to be a Judge. She served in that role for six years when she was nominated to be the First President of the Supreme Court, succeeding Stanisław

Dąbrowski, who had died earlier in 2014, and Lech Krzysztof Paprzycki, who was an acting First President.

Gersdorf spoke out against the government's reforms of the judiciary, in particularly the lowering of judges' retirement age.

Backed by public protests, Gersdorf continues to serve as First President of the Supreme Court, her term continues through 2020.

**Paweł KASPRZAK, - OBYWATELE RP** (born 26 March 1961 in Wrocław) is a Polish political and human rights activist, one of the leaders of the Obywatele RP movement, and a professional TV producer.



He was an Independent Students' Union, Orange Alternative movement and Solidarity "Solidarność" movement activist. Organiser of numerous protest actions against the current government.

**Mr Jerzy KWAŚNIEWSKI**, President of the Board of the Ordo Iuris Institute,



Institute for Legal Culture Ordo Iuris - Polish non-governmental organization created in 2013. It aims to "research on the legal culture and spiritual heritage in which Polish culture is rooted and propagate them in public life and the legal system". The Institute is among the interest groups articulating postulates of the Catholic Church.

Jerzy Kwaśniewski is a civil litigation and criminal defence attorney, human rights specialist, committed to the protection of pro-family and pro-life initiatives and fundamental constitutional values. Serves as member of the Respect for Family Life and Family Autonomy Council. Secretary of the governmental Monitoring Council for Combating Domestic Violence. In 2016 served as Vice-President of the Stop Abortion Legislative Initiative.

# Friday, 21 September 2018

## **Jacek CZAPUTOWICZ**, Minister of Foreign Affairs



Mr Czaputowicz was born in Warsaw, Poland on 30 May 1956. In the years 1980–1983 he studied geography at the University of Warsaw. In 1986 he graduated from the Faculty of Economics of Warsaw School of Economics.

He joined the Ministry of Foreign Affairs in 1990. He was deputy director, then director of the Consular and Emigration Department (1990–1992). In the years 1993–1998 he was a senior adviser to the Minister in the Department of Studies and Planning. In 1998 he became the deputy director of the Accession Negotiations Department at the Office of the Committee for European Integration. In the same year, he became the deputy head of the Civil Service and served until 2006. He was the director of the Foreign Policy Strategy and Planning Department of the Ministry of Foreign Affairs until 2008.

He was the deputy chairman of the Public Service Council (2007–2009), the Administrative Board of the European Institute of Public Administration in Maastricht (2006–2010) and the Public Service Council of the Prime Minister (2007–2009). In the years 2008–2012 he was the director of the National School of Public Administration. In 2014 he became a member of the program council of the Law and Justice party. From January 2017, he was the director of the Diplomatic Academy of the Ministry of Foreign Affairs [8]. He also joined the board of the Polish Institute of International Affairs. On 15 September 2017, Prime Minister Beata Szydło appointed him as the Undersecretary of State in the Ministry of Foreign Affairs.

On 9 January 2018, he was appointed Minister of Foreign Affairs.

## **Konrad SZYMAŃSKI**, Secretary of State for European Affairs



Szymański earned a Master of Law at Adam Mickiewicz University in Poznań in 1995. He was an advisor to the Deputy Marshall of the Sejm from 1999 to 2000, subsequently serving in the Political Cabinet of the Prime Minister of Poland.

From 2004 to 2014, he was a Member of the European Parliament for the Lower Silesian Voivodship & Opole Voivodship with the Law and Justice party, part of the European Conservatives and Reformists group.

Szymański sat on the European Parliament's Committee on Foreign Affairs and its Committee on Women's Rights and Gender Equality. He was a substitute on the Committee on Civil Liberties, Justice and Home Affairs and a member of the delegation for relations with Belarus. On November 9, 2015, Szymański was designated as Secretary of State for European Affairs.

**The President**

Mr Claude MORAES  
Chair  
Committee on Civil Liberties, Justice and Home Affairs

D 314586 17.09.2018

EUROPEAN PARLIAMENT

Dear Mr Moraes,

Thank you for your letter dated 26 July 2018, requesting authorisation to send an eight-Member mission of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to Warsaw, Poland, from 19 to 21 September 2018, on the Rule of Law.

At its meeting of 10 September 2018, the Bureau took note that by letter dated 2 July 2018 you had originally requested that this mission take place on 17-19 September 2018, but due to developments in Poland (second hearing of the Polish authorities on the Rule of Law in Poland on 18 September) it is now requested to re-schedule the mission to 19-21 September 2018.

The Bureau also noted that the mission takes place in the framework of the LIBE report on the reasoned proposal from the Commission for a Council decision under Article 7(1) TEU as regards the situation in Poland and that you have been nominated standing LIBE rapporteur for the consent procedure on the situation in Poland, in accordance with Rule 99 of the Rules of Procedure.

The Bureau took note that the dates proposed for the mission (19 to 21 September 2018) coincide with three days set aside for external parliamentary activities in week 38 (turquoise week) and that the mission will consist of a maximum of eight official Members, including yourself travelling out of quota, in your capacity as Chair, pursuant to Article 2(3) of the applicable rules.

The Bureau also noted that, pursuant to Article 4 of the applicable Rules, any accompanying Members elected in the Member State to which the mission is travelling require prior authorisation by the Committee concerned in order to be able to join the mission and that in this instance the LIBE coordinators decided that no accompanying Members should join this mission.

Furthermore, the Bureau noted that the Conference of Presidents at its meeting on 6 September 2018, recommended to authorise the request, subject to the availability of quota for LIBE and on the understanding that the mission shall not exceed three days, including travel time.

In view of the above considerations, I have the pleasure to inform you that the Bureau authorised the mission in accordance with the recommendation from the Conference of Presidents.

Yours sincerely,

A handwritten signature in black ink, reading "Antonio Tajani". The signature is written in a cursive, flowing style with a large initial 'A'.

**Antonio Tajani**



*Michał Dworczyk*

DKPM.WPM.4420.4.2018.SK(3)

Warszawa, 25 września 2018 r.

**Pan Przewodniczący  
Claude Moraes  
Komisja ds. Wolności Obywatelskich,  
Sprawiedliwości i Spraw Wewnętrznych**

*Szanowny Panie Przewodniczący,*

w odpowiedzi na pismo Pana Przewodniczącego uprzejmie informuję, że Pan Premier przykłada jednakową wagę do działań w tym zakresie, niemniej jednak z uwagi na liczbę zaplanowanych wcześniej zobowiązań, nie będzie mógł spotkać się z delegacją Komisji.

Jestem głęboko przekonany, że przedstawiciele polskiej strony odpowiedzą na wszelkie pytania, czy wątpliwości i w sposób wyczerpujący przedstawią poglądy polskich władz.

Chciałbym również podziękować za zapewnienie przez Pana Przewodniczącego o osobistym przywiązaniu do tej wizyty i deklarację, że stanowisko polskiej strony zostanie uwzględnione w dokumencie końcowym. Strona polska przyjmuje ten fakt z wielkim zadowoleniem.

*Z wyrazami szacunku*



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### FORM

for the Service LEGISLATIVE QUALITY UNIT D - BUDGETARY AFFAIRS

**LANGUAGE** : Polish

**SENDER** - **ORGANISATION** :  
Chief of the Chancellery of the Prime Minister of Poland

- **SURNAME** : Dworczyk

- **FIRST NAME** : Michał

- **ADDRESS** : Al. Ujazdowskie 1/3

- **Postal code + CITY** : 00-583 Warsaw

- **COUNTRY** : Poland

**ADDRESSEE** - **(PRESIDENT or EP)** :  
or **OTHER** : Claude Moraes, Chair of the  
Committee on Civil Liberties, Justice and Home Affairs

**DATE of the document** : 18.9.2018

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### SUMMARY OF THE CONTENT OF THE MAIL

This is a response by the Chief of the Chancellery of the Prime Minister of Poland to a letter from the Chair of the Committee on Civil Liberties, Justice and Home Affairs.

The sender, inter alia, explains why the Prime Minister will not be able to meet with the Committee delegation.

Brussels, 25.09.2018



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Bureau - Office: no office  
Type d'objet - Type of item: RECOMMANDE  
Arrivé le - Arrived on: 24/09/2018 08:51:57  
De - From: BE  
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umowa Nr ID 382185/W  
z Poczta Polska S.A.  
z dnia 01.03.2018r.  
Nadano w FUP Warszawa 133”



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Mr. Claude Moraes  
The Chair  
Committee on Civil Liberties, Justice  
and Home Affairs  
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Belgium

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# Rule of law in Poland

Institutional & legal guarantees

STATE OF PLAY – SEPTEMBER 2018

# TABLE OF CONTENTS



Issues already discussed during previous hearing in June 2018:

- Supreme Court
- National Council of the Judiciary
- Extraordinary appeal
- Constitutional Tribunal
- Judicial retirement age
- Court presidents
- Disciplinary regime

New element:

- Developments concerning the Supreme Court



# SUPREME COURT



## The reform:

- 80 → 120 judges
- Two new chambers (Disciplinary; Extraordinary Control and Public Affairs)
- New retirement age

## Transitional period:

*12 judges declared their intention to adjudicate after reaching retirement age, 5 were granted consent of the President of the Republic*

## New First President Election Procedure:

*The General Assembly of Judges of the Supreme Court elects candidates for the position immediately after 2/3 of all judicial posts in the Supreme Court [80] are filled. → **judges already sitting in the Supreme Court keep majority***

# SUPREME COURT



**Appointing judges is a Presidential prerogative**

*Article 144 (3.17) of the Constitution*

**Wide criteria:**

- *interest of the justice system*
- *the public interest;*
- *Supreme Court personnel needs*
- *caseload in the particular chambers of the Supreme Court*

**Just one fulfilled – NCJ may grant a positive opinion**



# LOWER RETIREMENT AGE



## "Originally established term"?

### Article 179:

*"Judges shall be **appointed for an indefinite period** by the President of the Republic on the motion of the National Council of the Judiciary."*

### Article 180 (4):

*"**A statute shall establish an age limit** beyond which a judge shall proceed to retirement."*



# UNCONSTITUTIONAL?



## *Judgment of the Constitutional Tribunal of 24 June 1998, K 3/98*

*"the Constitution obliges the legislator to set an age limit, beyond which judges have to retire. According to the law on composition of common courts, this age limit was – and remains 70 years of age; beyond this limit no one can exercise judicial duties in courts referred to in Article 175 of the Constitution. **It does not mean, however, that the legislator is not allowed to set other, additional limits, beyond which judges may be retired, even without their consent.**"*

[the law of 17 December 1997 on amending the law on common courts **lowered the retirement age from 70 to 65 – also for the judges already in office** – with the possibility to prolong judicial tenure for 5 years]

# FIRST PRESIDENT OF THE SUPREME COURT



## Fixed term of office

### Article 183 (3):

*"The First President of the Supreme Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court."*

### Exceptions?

*"The analyzed norm of the Article 183 (3) of the Constitution introduces a term of office for the function of the First President of the Supreme Court. It was established at 6 years (...) The Constitution and the law on the Supreme Court do not foresee any limitation as to a number of terms, which means that a Supreme Court judge may hold the office of the First President of the Supreme Court for several terms, until the expiration of the last of these terms, **until the judge reaches retirement age** or retires for health reasons".*

– M. Safjan, L. Bosek, *Constitution of the Republic of Poland. Volume II. Commentary*, Warsaw 2016



# NATIONAL COUNCIL OF THE JUDICIARY



## European Standard – in theory, in practice?

- 1) Majority of judges elected by their peers
- 2) Judges elected by their peers – but **no majority**
- 3) Majority of judges – **elected by parliament/appointed by the executive**
- 4) **Minority of judges**, appointed in various ways (not exclusively by their peers)
- 5) **No judicial council at all** – nominations, appointments, promotions decided by the executive and/or the legislature

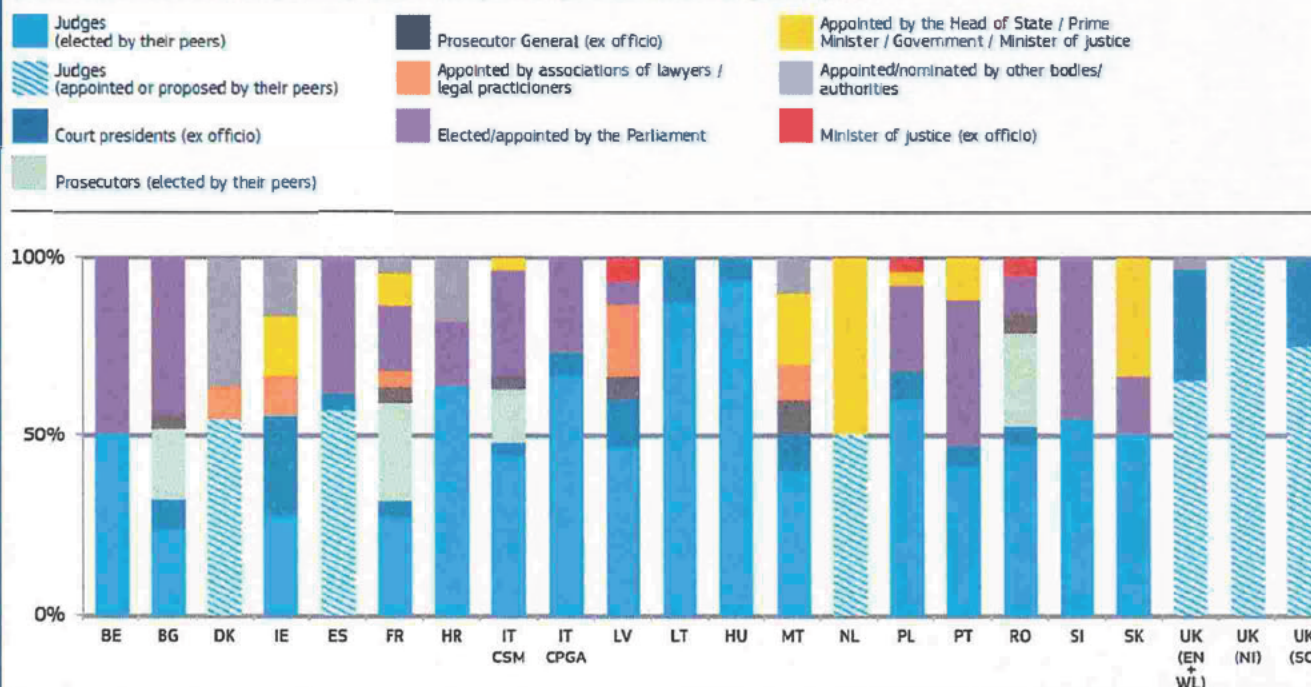
# NATIONAL COUNCIL OF THE JUDICIARY



**Figure 49**

## Composition of the Councils for the Judiciary according to the nomination process<sup>(\*)</sup>(<sup>es</sup>)

The figure shows the composition of Councils for the Judiciary (<sup>es</sup>), members of the ENCJ, according to the nomination process, depending on whether the members are judges/prosecutors elected or appointed/proposed by their peers, members nominated by the executive or legislative branch, or members nominated by other bodies and authorities. Not less than half the members of Councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary (<sup>es</sup>).





# WHAT IS THE ROLE OF THE NCJ?



## Article 186 (1) of the Polish Constitution

*"The National Council of the Judiciary shall safeguard the independence of courts and judges."*

## Article 187 (4) of the Polish Constitution

*"The organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, **as well as the manner of choosing its members**, shall be specified by a statute."*

# NATIONAL COUNCIL OF THE JUDICIARY



- Over 2/3 judicial majority [17 out of 25 members are judges]
- Irrevocability, fixed 4-year term
- 18 candidates for 15 seats in 2018, 18 – in 2014, 24 in 2010, 19 in 2006
- Hearing of candidates for judicial positions (limited hearings before 2018)
- Transparency – live on-line streaming, **judicial appointments are now subject of a live public discussion**
- Independence – secret ballot  
*(some candidates for the Supreme Court were recommended a majority as narrow as 13–11, others were rejected by similar numbers)*
- Amendments?



# EXTRAORDINARY APPEAL



"The concerns expressed by the Commission fully remain. The changes do not eliminate the broadness of the criteria governing the extraordinary appeal: they remain almost the same; **in particular they still refer to 'social justice'** albeit in a different wording."

"This could even justify, for example, the repeal of final judgments by Polish courts applying EU law as interpreted by the case-law of the Court of Justice of the EU."

– European Commission Contribution, page 10

## Article 2 of the Polish Constitution

*The Republic of Poland shall be a democratic state **ruled by law and implementing the principles of social justice.***

## Article 3 (3) TEU

***The Union ... shall promote social justice** and protection, equality between women and men, solidarity between generations and protection of the rights of the child.*

# COUNCIL OF EUROPE RECOMMENDATION



## Recommendation No. R (2000) 2 of the Committee of Ministers of 19 January 2000

The Committee of Ministers:

- I. Invites ... the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;
- II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to **ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings**, in instances where the Court has found a violation of the Convention, especially where:
  - (i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and
  - (ii) the judgment of the Court leads to the conclusion that
    - (a) the impugned domestic decision is **on the merits contrary to the Convention**, or
    - (b) the violation found is **based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings** complained of.



# STRICT CRITERIA – NARROW SCOPE



- Extraordinary appeal – introduced on 3 April 2018.
- Only two institutions allowed to lodge it before the Supreme Court
- Several thousand citizens requested the Ombudsman or the Attorney General to do it
- Only two appeals during almost six months
  - One lodged by the Ombudsman (inheritance law)
  - One – by the Attorney General (inheritance law)
- In May 2018, the criteria were even narrowed, in order to **protect legal stability and international obligations** – another result of the dialogue between Poland and the Commission

# CONSTITUTIONAL TRIBUNAL



*The three 2016 judgements have not been published as a 'judgement' but as 'findings delivered in breach of law'.*

*– European Commission Contribution, page 11*

**Already explained in previous hearing:**



## DZIENNIK USTAW RZECZYPOSPOLITEJ POLSKIEJ

Warszawa, dnia 5 czerwca 2018 r.

Poz. 1077

Rozstrzygnięcie wydane z naruszeniem przepisów ustawy z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym (Dz. U. z 2016 r. poz. 293), dotyczyło aktu normatywnego, który utracił moc obowiązującą.

**WYROK  
TRYBUNAŁU KONSTYTUCYJNEGO**

z dnia 9 marca 2016 r.

sygn. akt K 47/15



## DZIENNIK USTAW RZECZYPOSPOLITEJ POLSKIEJ

Warszawa, dnia 5 czerwca 2018 r.

Poz. 1078

Rozstrzygnięcie wydane z naruszeniem przepisów ustawy z dnia 25 czerwca 2015 r. o Trybunale Konstytucyjnym (Dz. U. z 2016 r. poz. 293), dotyczyło aktu normatywnego, który utracił moc obowiązującą.

**WYROK  
TRYBUNAŁU KONSTYTUCYJNEGO**

z dnia 11 sierpnia 2016 r.

sygn. akt K 39/16



# CONSTITUTIONAL TRIBUNAL



- All five judges nominated in October 2015 were appointed in breach of law (**their terms were to start after the parliamentary election**, which the then-ruling majority expected to lose)
- CT President appointed lawfully – contrary claim unsubstantiated
- Since current CT President took over – majority for judges appointed before 8th term of Sejm in **41% cases** *(updated for 17 September 2018)*
- Previous CT President – **0% cases** with majority for judges appointed during 8th term of Sejm
- All judges in CT history – endorsed by some political groups, some – members of political parties themselves (including previous President)
- Guarantees of independence → judgments **often contrary to parliament, government, Attorney General**

# ORDINARY COURTS – RETIREMENT AGE



- “Originally established term”?

Article 179:

*“Judges shall be **appointed for an indefinite period** by the President of the Republic on the motion of the National Council of the Judiciary.”*

Article 180 (4):

*“**A statute shall establish an age limit** beyond which a judge shall proceed to retirement.”*

- **April 2018 – retirement age equalized for male and female judges**



# OVERLOOKED IMPROVEMENTS



## Random allocation of cases

- **Previously:** head of court division could appoint a civil case to a judge as they pleased – **possible undue influence**
- **Now:** cases allocated by a computerized draw (*Law on the composition of common courts – Article 47a*)

## Strict limitation of transferring judges without their consent

- **Previously:** court presidents could transfer a judge at the beginning of every year if they deemed that it is necessary for organisational reasons
- **Now:** transfer prohibited without judge's consent, save for limited exceptions only – and the judge has **always the right to appeal** (*Law on the composition of common courts – Article 22a § 4a*)

## No changes to adjudicating panels during trial

- **Previously:** a judge could be swapped even in the last moment of a civil trial and the new one **could still issue a verdict, even not having heard the evidence in person**
- **Now:** composition of a bench unchanged during trial, save for exceptional circumstances (*Law on the composition of common courts – Article 47b*)

# COURT PRESIDENTS



- Function of a court president  $\neq$  judicial tenure
- **Major role – adjudicating**
- Court president – administrative duties
- After being relieved of duties – **still in active service**



# AMENDMENTS INTRODUCED IN 2018



## Dialogue between the Commission and Poland – results:

- Retirement age equalised for male and female judges
- Prolongation of judicial tenure – **transferred from Minister of Justice to the National Council of Judiciary**
- Court Presidents **dismissal may now be blocked** by the NCJ
- New procedure for appointing judges on probation
- Amendments also to the regulations on Constitutional Tribunal, Supreme Court, extraordinary appeal

# DISCIPLINARY PROCEDURE



## Who is in charge?

- Minister of Justice appoints Disciplinary Officer of the Ordinary Courts (DOOC) and two Deputy Disciplinary Officers – **only judges, appointed for 4-year terms**
- Additional Deputy Disciplinary Officers (also judges) are appointed by the DOOC **from among the candidates presented by the General Assemblies of Judges of respective District Courts** (at least 45).
- Any possible influence of the Minister of Justice – limited, and only during first stage:
  - MoJ may file a motion for initiating the proceedings
  - a special disciplinary officer may be appointed to initiate and carry it out
- Initial stage ends with a disciplinary indictment – or discontinuation



# DISCIPLINARY PROCEDURE



Mundial 2018 Kraj Świat Miasta Opinie Gospodarka Nauka Tech Kultura Classic Wideo Magazyny Tylko Zdrowie Wysokie Obcasy CJG24 Więcej



Kraj

## Ziobro powołał "głównego oskarżyciela sędziów". "Uczciwy i niepodatny na naciski"

Lukasz Woźnicki 22 czerwca 2018 | 15:54

*Gazeta Wyborcza, 22 June 2018: Ziobro [MoJ] appointed "head prosecutor of judges".  
"Honest and insusceptible to pressure"*

*"Judge Piotr Schab **contradicted the Minister of Justice and refused a disciplinary action** against judge Wojciech Łączewski. Right-wing media labelled him a member of the "extraordinary caste", but the Minister has just made the judge the top disciplinary officer in the country"*

# DISCIPLINARY PROCEDURE



## Who decides in the end?

- Indictment – only a start of the disciplinary trial
- Disciplinary judgment – at the hands of the judiciary
- First instance: a panel of three professional judges
- Second instance: a panel of two professional Supreme Court Judges and one Supreme Court Lay Judge
- **Minister of Justice – not involved**



# EUROPEAN COURT OF JUSTICE



## Cases filed by the Commission

- Judgments of the ECJ are final and binding
- At this stage – the case regarding the Supreme Court not filed to the ECJ
- The case regarding ordinary courts – still not withdrawn (even after amendments addressing relevant issues)
- **Poland has always respected ECJ rulings**

## Questions for preliminary rulings

- Implementation by the courts in particular cases, not government
- Suspensive effect applicable according to the ECJ case-law

# FURTHER STEPS



- Article 7 (1) TEU *vis-à-vis* infringement procedure
- Jurisdictional independence of the ECJ
- Objective, fact-based assessment
- Legal text vs. practical application of the norms (e.g. extraordinary appeal)
- Further amendments possible if needed
- Openness to a dialogue with the Council, Member States and the Commission



THANK YOU FOR YOUR ATTENTION





Permanent Representation  
of the Republic of Poland  
to the European Union

Brussels, 23<sup>rd</sup> of November, 2018

SP. PRUK - RPE-0124. 4. 2018. AR / 2229

Mr. Claude Moraes  
Chair of the Committee on Civil  
Liberties, Justice and Home Affairs  
(LIBE) of the European Parliament

*Dear Mr. Chairman.*

First of all I would like to thank for transmitting to the Polish authorities the draft report on the European Parliament's Rule of Law mission to Poland which took place in September.

We have carefully analyzed the content of the draft report and to our surprise we have noted that it included a number of inaccuracies. One of them was an imprecise description of the course of meetings which took place in the Ministry of Foreign Affairs, including systematic misspelling of names of meeting participants. In addition we regret that the LIBE delegation shortened the expert part of the meeting at the Ministry. In this way the delegation lost the opportunity of receiving the detailed information on the purpose, course and result of the judiciary reform in Poland.

We have also noticed in the draft document that the activities of the previous ruling coalition regarding the Constitutional Tribunal have not been included in the text. In the opinion of my authorities, actions of the previous Parliament had triggered the dispute and resulted in negative legal consequences.

A special attention has been paid by our services to the conclusions of the report. In our assessment many of them refer to the allegations formulated against the Polish government at earlier stages of the dispute and which were comprehensively explained in dialogue with the European Commission. It is worth noting that some elements of the report's findings, namely women's rights, have not been raised and discussed with the government. Furthermore, the report does not present the recent developments regarding the Supreme Court in connection with legislative work that took place last week.

In conclusion, my authorities do not share the findings of the draft report and they do not intend to comment on the content presented between participants at meetings behind closed doors. Regardless of that opinion, we would like to kindly suggest to transmit the draft report to all parties which have been interviewed by your delegation, with a request to refer to its content.

with my best regards

Andrzej Sados

Permanent Representative  
of Poland to the EU

IPOL-COM-LIBE D (2018) 47059

Andrzej Sadoś  
Ambassador  
Permanent Representation of Poland to the EU  
Rue Stevin 139  
B-1000 Brussels

D 319179 03.12.2018

Brussels, 30 November 2018

**Subject:** *LIBE committee mission visit to Warsaw, Poland on 19 - 21 September 2018  
- Mission report - Reply to your letter received on 28 November 2018*

Dear Ambassador,

Thank you for your letter dated 23 November concerning the draft mission report on the European Parliament's Rule of Law mission to Warsaw of 19 to 21 September 2018.

For your information, the extracts of the draft report relating to meetings with interlocutors organised directly by the European Parliament's Secretariat have been sent to those interlocutors for a possibility to submit comments, a possibility used by a number of them. As usual for LIBE missions, we expect the Permanent Representation to convey possible comments from the authorities the Permanent Representation organised meetings with.

As regards the shortening of the Expert Seminar at the Ministry of Foreign Affairs, which took place on Friday 21 September, the Delegation members had explained from the beginning that the aim of the mission was primarily to speak with the political authorities responsible for the reforms to the justice system. They were of the opinion that technical explanations had been and could always be provided in Brussels. I would like to inform you that the PowerPoint presentation with technical explanations on the reforms given during the Expert Seminar has been added in annex to the mission report.

In relation to your remark that the activities of the previous ruling coalition regarding the Constitutional Tribunal had not been included in the text, I kindly refer to pages 15-16 (meeting with opposition parties) and page 32 (meeting with the Ordo Iuris Institute for Legal Culture).

As regards the conclusions of the report, we take note of the general disagreement on the part of the Polish authorities. Those conclusions were however carefully crafted and are supported by a large majority of Delegation Members. The findings relate to the state-of-play at the time of the mission.



The issue of women's basic reproductive health and rights, while extremely important to a large majority of Delegation members and intrinsically linked to observance of the Rule of Law, was not the main focus of the mission and has therefore not been raised with the Polish authorities.

The spelling mistakes in certain names have obviously been corrected in the final version.

Finally, as announced, I will present the mission report in the LIBE Committee of the European Parliament on Monday 3 December.

I can only but repeat my regret that the Polish authorities declined specific meeting requests in framework of the Rule of Law mission in Warsaw in September and for the Hearing on 20 November.

Yours sincerely,



Claude Moraes