



Warsaw, May 23, 2022

Dear Madam President of the European Commission, Vice-Presidents and Commissioners.
Dear President and Vice-Presidents of the European Parliament.
Dear Chairperson of the LIBE Committee.

As Polish judges we once again address to you and ask to take any actions to restore the rule of law in Poland and to guarantee citizens of Poland and other Member States the right to an independent court.

The Court of Justice of the European Union and the European Court of Human Rights have questioned the independence of the Polish National Council of the Judiciary in a number of judgments, stating that this body appointed by political power does not ensure the proper guarantees of the independence of judges appointed with its involvement - in accordance with European standards. The ECtHR has pointed out a systemic problem of the functioning of the NCJ and found that any judge appointed to the Supreme Court with the participation of the NCJ did not meet the requirements of Article 6(1) of the ECHR.

It should be noted, that the Polish government has failed to implement the CJEU and ECtHR judgments concerning the National Council of the Judiciary, and the draft bill amending the Act of the Supreme Court, proposed by the President of Poland and currently before the Polish Parliament, does solve the NCJ problem at all. What is more, it provides a basis for defectively appointed judges to sit on the Supreme Court's new disciplinary body, called the Professional Responsibility Chamber. This is contrary to ECtHR rulings and will result in further complaints to the ECtHR and preliminary questions to the CJEU. The existence of this Chamber means consent to systemic violations of the European Convention on Human Rights in an EU Member State.

With the participation of the so-called neo-NCJ, about 2000 judges have been already appointed. Their verdicts can be successfully challenged due to the flawed appointment procedure. Further cases are pending before the Court of Justice of the European Union and the ECtHR concerning the effects of the appointment of judges with the participation of the politicised National Council of Judiciary. The Polish Judges' Association Iustitia has prepared a comprehensive bill draft implementing all the rulings of the European courts, which after public consultations was submitted for legislative work by the opposition parties. Unfortunately, the Polish Sejm (lower chamber of Polish parliament) not only failed to implement the judgments of the CJEU and restore the independence of the National Council of the Judiciary from political power, which is necessary for it to fulfil its constitutional tasks of protecting the independence of judges, but also it did the opposite - a few days ago, in the same political procedure, it elected the judicial members of the National Council of the Judiciary for another term of office. This Council was composed of persons with connections to political power, disgraced, including alleged participants of the so-called 'hate scandal' at the Ministry of Justice, whose aim was to discredit and fight judges defending citizens' right to an independent court. Presidents of courts, who are directly subordinated to the Minister of Justice - the Prosecutor General, were elected as Chair and Vice-Chair of the NCJ.

1. ECHR and CJEU judgments

Another four-year term of office for a defectively appointed National Judicial Council must result in a systematic increase in the number of defective judicial appointments in Poland. Such judges in four years' time may constitute half of the entire Polish judiciary. This will mean politicisation of the

Polish Judges' Association „IUSTITIA”

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judiciary in Poland and a lowering of the quality of jurisprudence of courts. A perfect illustration of this state of affairs - as reported in the free media - is the comment made by persons active in and connected with the NCJ about the selection of several judges, that such persons under normal circumstances could only dream of promotion. Among judges promoted by this Council were disciplinary commissioners (appointed by Zbigniew Ziobro – Minister of Justice and Prosecutor General), who prosecuted judges for their judgments. On the contrary – more than thousand judges have refused to participate in such 'rigged' competitions for several years. Without a change to the National Council of the Judiciary, the degradation of the Polish judiciary will continue.

We therefore believe it is necessary to initiate anti-infringement proceedings before the Court of Justice of the European Union in order to enforce European standards for selection of judges to the National Council of the Judiciary which: are consistent with the Polish Constitution, will ensure real participation of the judicial self-government, are transparent and thus guarantee selection of judges in accordance with the law and provide independence of the courts as provided Art. 47 of the Charter of Fundamental Rights, Art. 19. 1 second sentence of the Treaty of the European Union and Art. 6. 1 of the European Convention of the Human Rights.

The citizens of Poland expect that the National Council of the Judiciary will be elected in accordance with the Constitution of the Republic of Poland.

They also expect the Polish government to comply with the recommendations of the EC following the judgements of the CJEU and ECtHR. Polish women and men want a real restoration of the rule of law in Poland. A necessary condition for this is that changes are made to the NCJ in the way indicated above. Simply papering over an extremely flawed disciplinary system will not change much in this regard. The rule of law cannot be restored by fighting only the effects and not the causes of the crisis.

On behalf of

the Polish Judges Association IUSTITIA
Krystian Markiewicz – President of the National Board

Themis Judges Association
Beata Morawiec – President of the Main Board

Association of Family Judges in Poland
Ewa Ważany – President

Pro Familia Family Judges Association
Karolina Sosinska – President

Polish Association of Administrative Court Judges
Aleksandra Wrzesińska-Nowacka – President



Europe, May 30th 2022.

The undersigned European associations of judges and prosecutors, having taken notice of the attached letter sent on 23rd of May 2022 by five associations of Polish judges: “IUSTITIA” Association of Judges, “Themis” Judges Association, Association of Family Judges in Poland, “Pro Familia” Family Judges Association and Polish Association of Administrative Court Judges (further: the Polish judges letter) to

Madam President of the European Commission,

Vice-Presidents and Commissioners,

President and Vice-Presidents of the European Parliament,

Chairperson of the LIBE Committee,

Have decided to issue this

JOINT STATEMENT IN SUPPORT OF THE POLISH JUDGES LETTER

The undersigned European associations fully endorse the above-mentioned letter of 23rd of May 2022.

The recent initiative of the Polish Government and the Polish Parliament, to replace the existing Disciplinary Chamber of the Supreme Court by another body (the Professional Responsibility Chamber) does not meet the criteria established by European courts to re-establish the Rule of Law in Poland.

Rule of law undoubtedly means following the European standards of an independent judiciary and also imposes on all relevant authorities the duty to execute and therefore to fully implement and comply with the judgements of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR).

Both are still not the case in Poland.

The recent election of the new composition of National Council of the Judiciary (NCJ) contradicts the European standards of an independent Council, that require that at least half of its members must be judges elected by their peers. According to the CJEU the composition of the NCJ where 23 of the 25 members have been appointed by the Polish executive or legislature or are members thereof gives rise to legitimate doubts as to the independence of the NCJ. The ECtHR has meanwhile established that the NJC is a body that lacks sufficient guarantees of independence from the legislature and the executive. Renewing the term of office of the NJC with four more years without restoring the composition of the NCJ to a state consistent with both the Polish Constitution and in line with the judgements of the CJEU and the ECtHR is not only a sign of the unwillingness of the Polish authorities to completely restore the Rule of Law, but also forms a direct challenge to the CJEU and should lead to a new infringement procedure by the European Commission. The consequences of four more years of functioning of this unlawful body may be disastrous for Poland and for the common judicial area in the European Union as pointed out in the Polish judges letter.

Also, the new disciplinary body as proposed in the draft bill falls short of complying with the decisions of the European Courts, and will not prevent the Polish executive to exert control over judges, thus further undermining their independence.



AEAJ



European Association of Judges



RECHTERS VOOR RECHTERS



The legislation on the appointment and the discipline of judges should truly comply with the judgements of the CJEU and ECtHR. Reality has shown to European authorities in recent years that the Rule of Law cannot be bargained or traded, as it is one of the cornerstones on which the European Union is founded. Therefore, the respect for its basic principles must be kept outside of any political or financial negotiation.

In view of the above stated, the undersigned associations

- **express their strong determination to continue their support to Polish judges and citizens in their endeavours until an independent judiciary, which is freed from undue influence of the other powers of state, is really restored,**
- **note that the recent changes adopted by the Polish Government and the Polish Parliament are not sufficient to comply with the decisions of European courts (CJEU and ECtHR) in what regards the restoration of the Rule of Law;**
- **urge the European authorities, especially the European Commission and the European Council, to use all tools at their disposal to convince the Polish authorities to sincerely and fully restore the independence of the judiciary, which has been seriously eroded in recent years;**
- **express their full solidarity to all the independent Polish magistrates that keep fighting for the independence of the Judiciary.**

Edith Zeller

President of the Association of *European Administrative Judges* (AEAJ)

Duro Sessa

President of the *European Association of Judges* (EAJ)

Tamara Trotman

President of *Judges for Judges*

Filipe César Marques

President of *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL)