

Build a modern judiciary with us

Context:

The judiciary is in a deep and structural crisis. The last 8 years have seen the collapse of the judiciary. Its condition was average, now it is tragic. Court proceedings are taking longer and longer. It takes years to settle property cases, to get a divorce, to award custody of children, to obtain division of property. In District courts it is up to 80% longer in civil non-procedural cases compared to 2015. A commercial case in regional courts used to take on average 14 months and now it takes 20 months - half a year longer. Civil appeals take 80% longer to hear. There are 6,000 cases waiting to be heard in the Civil Chamber of the Supreme Court. **The courts are operating in an archaic environment.** While in the world artificial intelligence solutions are being implemented, **in Poland court files are still exclusively paper-based and filing letters in electronic form is prohibited.** Citizens who must communicate with the court according to outdated rules waste time and money. The system is disconnected from citizens' needs, making it difficult to do business, sort out important family and property matters. **It violates their fundamental right to have their case heard by an independent and impartial court, within a reasonable time.**

The politically elected National Council of the Judiciary, the political control over the positions of court presidents, the politicization of the prosecution service and the Constitutional Court [TK] have had disastrous results. Proceedings are taking longer and longer; citizens have no confidence in judicial institutions and in the law. Poland's obligations as a member of the European Union are being violated. This creates severe financial consequences that burden all Poles: compensation for protracted proceedings, blockage of EU funds. We do not have 58 billion euros from the National Recovery Plan [KPO], 70 billion euros from the Cohesion Fund are at risk, the penalty for the Disciplinary Chamber of the Supreme Court is 556 million euros.

We need to pass laws that guarantee the payment of EU funds to Poland and rebuild systemic guarantees of the independence of the courts and the prosecution. We need to protect citizens from the negative effects of flawed appointments of neo-judges and prevent

legal chaos. The apolitical election of Constitutional Court judges must be ensured, and its authority rebuilt. The Public Prosecutor's Office must be more effective in prosecuting the crimes of civil servants and politicians.

A broad coalition of NGOs has joined forces and created a common concept of how to build a modern judiciary. It is a package of five laws and accompanying recommendations that address key problems in the system. **It is the only such proposal in Poland - comprehensive, based on expert consensus and refined in every respect.** Its details were presented on 24 June 2023 in Gdansk at the 3rd Congress of Polish Lawyers.

The justice system must serve citizens better.

1. Diagnosis.

- 1) collapse of the judiciary, trials taking up to 80% longer [Iustitia's report];
- 2) exclusion of citizens - lack of digital access to court;
- 3) parties' fears about the validity of judgments handed down by neo-judges;
- 4) the validity of elections is to be decided by the Supreme Court's Extraordinary Control and Public Affairs Chamber, in which neo-judges sit;
- 5) electronic backwardness;
- 6) financial consequences for citizens:
 - a. blocked money from the KPO,
 - b. blocked money from the Cohesion Fund,
 - c. threatened money from the EU multiannual budget.
- 7) ineffective prosecutor's office:
 - a. increase in backlogs,

b. does not protect citizens, protects politicians;

8) crisis in the Constitutional Court:

a. proceedings that take many years,

b. decrease in the number of constitutional complaints,

c. the problem of the validity of the judgments issued with the participation of understudy judges;

d. manual control of the Constitutional Court by its President.

2. What changes need to be made?

1) improvement of court proceedings,

2) making the courts to be citizen-oriented through:

(a) digital access to court,

b) introduction of citizen judges (taking part in the adjudication at the motion of the parties) instead of jurors,

c) introduction of citizens' commercial judges for commercial cases (persons designated by the self-government of entrepreneurs),

d) participation of injured parties in disciplinary proceedings,

(e) establishment of Social Council at the National Council of the Judiciary,

3) sorting out the issue of judgments given by neo-judges,

4) modernisation the courts through:

(a) full digitalisation,

(b) modern management,

5) depoliticization the judiciary through:

(a) separation of the functions of Minister of Justice and the Prosecutor General,

- (b) new rules for the selection of judges of the Constitutional Tribunal,
- (c) politically neutral selection of the National Council of the Judiciary,
- (d) setting up a new model of supervision of the judiciary.

3. How to make a difference? Modern judiciary.

1) The structure of the common courts:

- (a) citizen judges elected in local elections,
- (b) transparent disciplinary proceedings with participation of injured parties,
- (c) modern management of courts at the local level (reports on performance submitted to local government bodies),

2) the National Council of the Judiciary:

- (a) judgments of neo-judges will remain valid (resumption of proceedings only at the request of a party),
- (b) politically neutral election of members of the Council,
- (c) establishing Social Council at the NCJ - actual citizen control,
- d) transparent process of judicial appointments,
- (e) return of neo-judges to previously held positions, to prevent crisis in adjudicating vacant posts will be filled temporarily with delegated judges,
- (f) protection of assessor appointments.

3) Supreme Court

- (a) liquidation of the backlog (there are 6,000 cases pending in the Civil Chamber, including CHF mortgage loan agreement cases),
- (b) abolition of the Chamber of Extraordinary Control and Public Affairs - the validity of elections must be decided by an independent court,

(c) abolition of the Chamber of Professional Responsibility - introduction of a new, efficient disciplinary system to protect victims,

(d) decisions of abolished chambers ineffective.

4) Public Prosecutor's Office

(a) elimination of the backlog,

(b) actual protection of citizens' rights and freedoms,

(c) separation of the functions of Minister of Justice and Prosecutor General - to safeguard politically neutral prosecution of crimes,

(d) enshrining in the Constitution guarantees of prosecutorial independence,

5) Constitutional Tribunal:

(a) public hearings - Tribunal accessible to citizens,

(b) larger participation of civil society organisations in proceedings,

(c) election of judges after public hearing of candidates and by a 3/5 majority of votes, and therefore not by the votes of one political party,

(d) eliminating single-person management and manipulation in appointing the adjudicating panel - increasing the role of the Assembly,

(e) clear rules on the term of office of the President.

4. Instant effects of change

1) Immediate acceleration of proceedings and wider access to court for citizens will prevent increased business and human costs:

a) digital filing and access to files,

b) judges will be able to focus on solving citizens' problems and not on technical activities,

c) rapid circulation of correspondence,

2) courts immediately open to citizens will strengthen confidence in the judiciary:

a) citizen judges and citizen commercial judges,

- b) citizen control of the activities of the NCJ,
- c) open hearings in the Constitutional Court with broad NGO participation;
- 3) AI in electronic warrant proceedings as the beginning of full digitisation:
 - a) fast payment orders in simple cases,
 - b) freeing up of posts - registrars will be able to handle more cases in land registers or registries;
- 4) the retention of neo-judges' rulings will protect citizens from uncertainty about the validity of the judgment;
- 5) an independent prosecutor's office will protect citizens and fight corruption, it will stop being a tool to harass people in the name of political interests;
- 6) an end to problems with EU institutions, full unblocking of European funds and an end to penalties.

5. Recommendations - an ecosystem of change

1. a modern map of the ordinary judiciary will give knowledge of the workload of individual judges, which will allow cases to be divided effectively between them, resulting in faster adjudication,
2. reform of procedures,
3. more posts for court clerks and IT specialists,
4. a new law on legal experts,
5. legislation on comprehensive digitisation,
6. real assistance to victims through the Justice Fund,
7. unlocking funds from the National Recovery and Resilience Plan.