

The 2018 Human Dimension Implementation Meeting**Working Session 4: Rule of Law I**

Wed, Sept 12th, 2018

Statement on behalf of the Commissioner for Human Rights in Poland**(Full text)**

Thank you, I represent the Polish Ombudsman - the Commissioner for Human Rights who is highly concerned with the rule of law standards in Poland, especially with regard to the principle of independence of courts. The situation in Poland has been already described, analysed and criticised in many international reports, including Venice Commission Reports, OSCE ODIHR or UN Special Rapporteur on the independence of judges and lawyers for which the Ombudsman is very grateful. It has been also described in several preliminary questions of the Polish courts to the CJEU asking for the interpretation of EU law. However, since the government pays no attention to the international documents, the situation in Poland has worsened seriously. Not only the Constitutional Tribunal no longer works properly, but in a moment there will be no independent Supreme Court in Poland.

Let me draw your attention to some of the recent developments. Based on powers provided by the new law, the Minister of Justice reportedly dismissed and replaced around 149 presidents and vice-presidents of common courts as of the end of May. On 3 July, the retrospectively lowered retirement age took effect for Supreme Court judges, affecting 27 out of 72 Supreme Court judges, including the First President of Supreme Court whose term is determined in the Constitution as 6 years and should end in 2020. The yesterday's decision of the President to prolong mandate of only 5 out of 12 SC judges without any grounds or reasoning clearly illustrates the possible influence of the executive over judiciary. The National Council for the Judiciary, under new provisions, has been already elected in a politicized, non-transparent procedure. Its 15 judicial members were elected not by their peers, but by 3/5 majority in a Parliament, in a highly non-transparent way with a clear influence of the Minister of Justice. In July the President of Poland announced 44 vacant positions in the Supreme Court, most of them for the seats in the two new chambers of the Supreme Court. These two chambers are meant to be responsible for disciplinary proceedings and determining the validity of general elections. The members of those chambers will be

soon nominated by the President following the procedure in the newly created National Council for the Judiciary.

The practical implementation of newly adopted laws clearly shows that the politicians have gained direct influence on the procedures related to the appointment, promotion and discipline of judges. The Commissioner for Human Rights is afraid that the newly adopted disciplinary system and applied procedures will be used against those judges who are of the opinion different than the Minister of Justice. To illustrate it with the situation from the last days: the judges of the District Court of Łódź and Warsaw who requested the Court of Justice of the EU for preliminary ruling has just been summoned to provide an explanation with regard to their decisions. After that the disciplinary proceedings may be initiated.

Let me emphasize that judges must not be influenced and must not be at risk of self-censorship, assessing whether a substantive decision they are about to take would antagonize political office-holders and hence would put at risk an extension of their term as a judge or any career advancement. The likeliness of the chilling effect of new provisions on disciplinary procedures on judges' decisions is very clear now.

We suggest following recommendations for Polish delegation as the most urgent ones:

- immediately stop the nomination procedure in the Supreme Court and repeal all recent changes regarding the Supreme Court;
- start the real discussion on the necessary changes in the judiciary in Poland,
- avoid actions and discourse which may discredit the judiciary or undermine its independence, including actions aimed at initiating disciplinary proceedings against those judges who just make use of all procedural possibilities to protect the rule of law.