

POLAND – CURRENT SITUATION.

The core problem and the source of all problems with the status of judges in Poland at the moment is the politicized new Judicial Council. 23 out of its 25 members are now dependent on the political power, as was indicated first in the Court of Justice judgment of 19 November 2019. The National Judicial Council plays a significant role in the nomination process of judges, as the nomination takes place upon a motion from the Council. Because of lack of independence of this body, there are serious doubts whether judges nominated to judicial positions upon its motion fulfill the requirements of an independent court. This is a necessary condition for a person to be called a European judge.

At this point, by the power of the so-called Muzzle Bill of 2020, Polish judges are still prevented by law from examining the correctness of judicial appointments, even though both European courts have stated very clearly that a court of a Member State should disregard any national regulations preventing it from applying EU law or European judgments.

The Court of Justice of the European Union issued two more important decisions in the summer of 2021.

First of them was the decision of 14 July 2021 ordering interim measures to suspend all actions of the Disciplinary Chamber and the effects of the Muzzle law (case I C – 204/21).

The second decision was the judgment of 15 July 2021 in case C-791/19. The Court of Justice of the European Union ruled that Poland failed to fulfil its obligations as a Member State by introducing a new model of disciplinary liability for judges and by creating a special Disciplinary Chamber in the Supreme Court. The judgment was passed in the case of a complaint filed by the European Commission regarding the disciplinary regime with respect to judges in Poland.

The only public authorities that followed these decisions of the Court of Justice were the courts. Different panels of judges began to examine whether a judge whose decision they were to check or execute was properly appointed.

Instead of following the CJEU judgments, the subordinates of the Minister of Justice/Prosecutor General, including presidents of courts, prosecutors and disciplinary prosecutors, began to harass judges even more for such judicial decisions.

At this moment Polish judges who examine the proper composition of a court or refuse to adjudicate with neo-NCJ nominees:

- get suspended for 30 days either by the president of a court (judge Piotr Gąciarek got suspended by Piotr Schab, the disciplinary prosecutor for judges and the newly nominated president of the Regional Court in Warsaw) or by the Minister of Justice – Prosecutor General himself (judges Adam Synakiewicz, Marcin Rutkiewicz, Marta Piłsniak, Maciej Ferek, Agnieszka Niklas-Bibik, Joanna Hetnarowicz-Sikora);
- get moved to another department of the court, for example from criminal to civil cases (judges Maciej Czajka, Beata Morawiec, Katarzyna Wierzbicka).

The Disciplinary Chamber, even though it should not be working, between October and November 2021 suspended four more judges for an indefinite period of time: Warsaw Regional Court judges Krzysztof Chmielewski (salary reduced by 25%) and Piotr Gąciarek (salary reduced by 40%), Maciej Ferek from the Regional Court in Cracow

(salary reduced by 50%) and Marcin Rutkiewicz from District Court in Elblag (salary reduced by 40%). Their only crime was that they followed the judgments of the Court of Justice of the European Union and applied control of judicial nominations of the persons whose decisions they considered.

On 27 October 2021 the Vice-President of the CJEU imposed a fine on Poland of €1,000,000 per day for failing to comply with the interim measures ordered by the CJEU in July 2021 regarding the functioning of the Disciplinary Chamber and the application of the Muzzle Act.

The fine has reached 161 000 000 EUR so far. The Polish government is still “negotiating”.

Meanwhile, there are new cases C-181/21 and C-521/21 in the CJEU with preliminary questions from Polish courts aimed at establishing the status of the common courts judges nominated with the participation of the neo-NCJ.

The impact of the situation in Poland to other European states

The system of the European judiciary and mutual recognition of judicial decisions is based on common trust. However, the irresponsible actions of the ruling coalition in Poland have led to a situation when a person not only can doubt if the judicial decision is correct and just, but even whether it was issued by a real judge or rather a pseudo-judge. This means serious deterioration of the principles of European cooperation, because every authority applying EU law has to fulfil the same standards of independence. There is no such automatic certainty with respect to Polish courts any more.

The chaos caused by the improper election of the NCJ can result in invalidity of important judgments, for example concerning parenthood, divorce, heritage and so on.

Therefore a judge from another EU country might want to consider, when faced with a judicial decision issued by a Polish court, whether the judge who issued the decision was properly appointed, to ensure the maximum protection of the rights of his or her own citizens.

The tenure of the improperly elected neo-NCJ has come to an end. So far about 2000 judges (1/5 of the Polish judiciary) have been nominated with the participation of this body. The election process of a new Council began, this time with only 19 candidates, mostly the previous members of the neo-NCJ. If this election goes through, the Polish system of judiciary, and in consequence the European one, will collapse into total chaos, and nobody will know who is a judge and who isn't any more. This is indeed a turning point, both for the judges and for the whole of society.

Therefore on behalf of the Polish judges I humbly ask the European Association of judges to take once again a stand in defence of the independent European judiciary.