



Rome, May 2023

**The Committee of Ministers
Council of Europe**
67075 Strasbourg Cedex
France

Your Excellences,

The European Association of Judges (EAJ) forms part of the International Association of Judges (IAJ), which was founded in Salzburg (Austria) on 6th September 1953. It is a professional, non-political, international organisation, bringing together national associations of judges approved by the Central Council for admission to the Association. The IAJ is organised in four Regional Groups, one of which is the EAJ.

The main aim of the association is to safeguard the independence of the judiciary. The objects of the EAJ/IAJ are recorded in its Constitution and Regulations, as follows:

- to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.
- to safeguard the constitutional and moral standing of the judicial authority.
- to increase and perfect the knowledge and the understanding of Judges by putting them in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organizations, with foreign laws and, in particular, with how those laws operate in practice.
- to study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them.

Its members encompass 94 national associations or representative groups of Judges, from five continents. Its members include the Polish Judges Association (IUSTITIA), which is an association of 3 617 Polish judges, approximately 70 of whom are subject to disciplinary measures.

EAJ has observer status in various Council of Europe bodies, such as CEPEJ and CCJE.

The European Association of Judges would like to express strong concern in connection with the Polish Government's refusal to enforce particular judgements of the European Court of Human Rights. As an association of judges from States-Parties to the Convention we find it appalling that the judgements of the Court remain void. Moreover, it seems that the Polish Government declares

that it finds these judgements non-binding, using as a pretext a decision of the Constitutional Tribunal in the case no. 7/21.

It has done so in the Observations presented to the European Court of Human Rights in the case *Zielińska vs. Poland* and 11 other applications (case No. 48534/20), concerning faulty composition of judicial panels in various types of courts, due to the improper nomination process. In this particular case the Government stated as follows:

“47. The Government observe that the circumstances of the foregoing applications *prima facie* lead to the conclusion that they may be covered by the scope of the judgment of the Constitutional Tribunal of 10 March 2022 in the case no. K 7/21

48. In its judgment the Constitutional Tribunal has ruled *i.a.* that Article 6 § 1, first sentence of the Convention – to the extent that, when assessing the fulfilment of the condition of a “court established by law”, it allows the European Court of Human Rights or national courts to disregard the provisions of the Constitution, statutes and judgments of the Polish Constitutional Tribunal, and allows the European Court of Human Rights or national courts to disregard the provisions of the Constitution, statutes and judgments of the Polish Constitutional Tribunal and enables the independent creation of norms concerning the nomination procedure of national judges by the European Court of Human Rights or national courts in the process of interpreting the Convention – is inconsistent with Article 89 section 1 point 2, Article 176 section 2, Article 179 in conjunction with Article 187 section 1 in conjunction with Article 187 section 4 and Article 190 section 1 of the Constitution. It also has stated that Article 6 § 1, first sentence of the Convention – to the extent that it authorises the European Court of Human Rights or national courts to assess the compliance with the Constitution and the Convention of laws relating to the judiciary system, the jurisdiction of courts and the law specifying the system, scope of activities, mode of work and the method of selecting members of the NCJ – is inconsistent with Article 188 points 1 and 2 and Article 190 section 1 of the Constitution.

49. The consequence of this judgment is the removal of the norms indicated therein from the system, and in effect the decisions issued on their basis, *i.e.* four judgments of the Court: the judgment of 29 June 2021 in the case of *Broda and Bojara v. Poland*; the judgment of 22 July 2021 in the case of *Reczkowicz v. Poland*; the judgment of November 8, 2021 in the case of *Dolińska-Ficek and Ozimek v. Poland* and the judgment of February 3, 2021 in the case of *Advance Pharma sp.z o.o. against Poland* do not have the attribute provided for in Article 46 of the Convention (enforceability obligation). The same defect would have the judgment finding a violation of Article 6 § 1 of the Convention in the present cases.”

As can easily be seen from the above statement, the Polish government manifestly refuses to enforce any judgment of the European Court of Human Rights, both already issued and i, where it was stated state that a court panel composed of judges nominated with the participation of the National Council of Judiciary formed according to the regulations of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary¹ is not a tribunal established by law within the meaning of Article 6 of the Convention.

In the light of the above statement, the communication² of 5/04/2023 of the Polish Ministry of Foreign Affairs to Ms. Clare Ovey, the Head of Department for the Execution of Judgments of the European Court of Human Rights should be considered merely as a smokescreen.

The legal changes listed in the notification are highly insufficient to ensure the reinstatement of the rule of law and independence of the judiciary in Poland.

The European Association of Judges finds this attitude unacceptable.

Poland has voluntarily undertaken the obligation to be bound by the Convention and its Government cannot choose to enforce only those judgements of the European Court of Human Rights that it approves or agrees of.

Such an attitude leads in fact to legal “Polexit” and cannot be accepted neither by the Committee, nor by other States – Parties to the Convention.

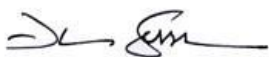
It should be noted that the European Association of Judges, alongside with three other judicial associations have filed a case in front of the Court of Justice of the European Union against the European Council, concerning the approval of the Polish Recovery and Resilience Fund without implementation of the necessary legal changes ensuring the reinstatement of the independence of the judiciary in Poland (Case T-530/22).³

As judges and as association of judges we are bound to be guardians of the rule of law, both on national and international level.

Therefore, we plead to the Council to undertake all available steps to ensure proper enforcement of the judgments of the European Court of Human Rights in Poland as well as other states.

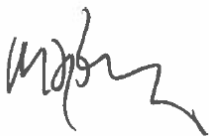
Sincerely Yours,

The Board of EAJ



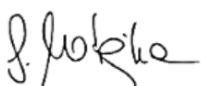
Duro Sessa

President



Mikael Sjoberg

Vice-President



Sabine Matejka

Vice-President

1 This Act provided for the judicial members of the Council of the Judiciary to be elected by the Sejm. As a
result, 23 out of the 25 members of the Council derived from the will of the political power, undermining the
ability of the Council to perform its constitutional task of safeguarding the independence of the judiciary

2 [https://hudoc.exec.coe.int/ENG#{%22EXECIdentifier%22:\[%22DH-](https://hudoc.exec.coe.int/ENG#{%22EXECIdentifier%22:[%22DH-DD(2023)429E%22],%22EXECDocumentTypeCollection%22:[%22obs%22]})
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3 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022TN0530;](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022TN0530)
<https://www.iaj-uim.org/iuw/wp-content/uploads/2023/04/DRAFT-Press-Release-April23-version-17-April.pdf>