

KRAKÓW DECLARATION

With deep concern and regret MEDEL maintains its view presented in the statement of July 18th, 2017 on the reform of the Supreme Court and the Judicial Council in Poland. Unfortunately, the rule of law in Poland is even at higher risk than it was five months ago. The act on the system of common courts, adopted on July 28th, 2017 empowers the Minister of Justice to revoke current Presidents of all levels of all ordinary courts without any justification, based on his arbitrary decision. 33 presidents were dismissed so far, usually by a single-sentence fax sent overnight.

The retirement age of judges has been decreased to 60 years for women and 65 for men, with mandatory dismissal of the judge from the post when reaching retirement age. A judge may only keep the post upon arbitrary permission of the Minister of Justice.

Both aforementioned provisions directly violate the Constitution of the Republic of Poland and definitely weaken the independence of courts and judges.

MEDEL is also greatly disappointed to learn, that Sejm has just adopted the law on the Supreme Court and Judicial Council, that raises the very same concerns as drafts from July 2017. The law - almost identical in the effect to the one previously vetoed by the President of Poland - increases the powers of the executive (this time the President) over the judiciary and deliberately violates the principle of separation of powers.

The new law on National Judicial Council, violates the Constitution and ignores the recommendations of the Venice Commission, by dismissing current NJC (violating constitutional terms of office) and calling new one with the members elected in 100% by the parliament (violating the constitutional rule of majority of judges elected by judges in NJC). This way NJC will be another political body controlled by the parliament.

The new law on Supreme Court introduces a Supreme Disciplinary Chamber with special better remunerated judges (150% of basic salary) appointed by the new National Judiciary Council, with the sole objective of disciplining judges, attorneys of law, legal counsellors and other law professions. The cases in the Supreme Disciplinary Chamber will be ruled with the participation of lay judges elected by the parliament.

Those changes completely eliminate constitutional guarantees of judicial independence. Nominating, controlling, dismissing and disciplining of the judges (and also disciplining other lawyers) are to be executed by those nominated by the ruling party.

President

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The introduction of an “extraordinary appeal” with the potential to overrule any final judgement of any court made within the last 20 years and any future final verdict within 5 years from the date of the verdict also greatly endangers the rule of law in Poland.

This situation is further aggravated by other changes in the law, including:

- Limiting freedom of assembly;
- Changes in the election code – dismissal of current National Election Committee (consisted of judges), establishing a new one with members elected by the Parliament, introduction of new Election Commissars, possible modification of electoral districts and modification of voting modalities (including revoking the right to vote by mail for disabled);
- Activities of the government bodies (KRRiTV – National Council for Radio and Television) with objective to achieve chilling effect on the opposition media (recent fine of 351.000 EUR on private channel for broadcasting protests in front of the parliament in December last year);
- Unethical & deceitful “billboard campaign” directed at discrediting courts and judges, (financed by state-enterprises-sponsored foundation);
- Proposal of law banning judges from taking management posts in associations, including judges associations, aiming at weakening those organizations;
- Controlling NGO funding by National Freedom Institute, established by the government.

Observing this further deterioration of the rule of law in Poland, MEDEL calls upon the Senate and the Polish President to re-assess the recent legislation proposals and to observe the European values shared by the family of European States. MEDEL also reiterates its request to the competent EU institutions to take all possible steps to protect the rule of law in Poland as a member state of the European Union.

Kraków, December 13th, 2017