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Annual Rule of Law Report - stakeholder consultation

Fields marked with * are mandatory.

Introduction

In the Political Guidelines, President von der Leyen announced that the Commission will set up a comprehensive European rule of law mechanism covering all Member States, with objective annual reporting by the European Commission[1]. In July 2019, the Commission adopted its Communication on Strengthening the rule of law within the Union - a blueprint for action, setting out some of the features of such a mechanism[2]. The first annual Rule of Law Report is one of the major initiatives of the Commission's Work Programme for 2020. The new European rule of law mechanism will act as a preventive tool, deepening dialogue and joint awareness of rule of law issues.

In the preparation of the annual Rule of Law Report, the Commission will rely on a diversity of relevant sources, including input to be received from Member States, country visits, and stakeholders' contributions. In order to facilitate the appropriate involvement of stakeholders, the Commission is inviting stakeholders to provide written contributions to the Report through this targeted consultation. The objective is to feed the assessment of the Commission with factual information on developments on the ground in the Member States.

The input should consist of a short summary, preferably in English, of information in the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work of your organisation. The contribution should highlight significant developments, primarily since January 2019. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make reference to any contribution already provided in a different context or to Reports and documents already published.

Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

Please provide your contribution by 4 May 2020. In case of requests for clarifications, you could contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

[2] COM(2019) 343 final

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar as regards the following types of developments in particular. This can include challenges, current workstreams, positive developments and best practices:

Information prepared and collected by your organisation

- any reports, statements or other documents relating to relevant developments in a Member State published by your organisation
- other direct information on the situation on the ground

Legislative developments

- legislation in force
- legislative drafts currently discussed in Parliament
- legislative plans envisaged by the government

Policy developments

- implementation of legislation
- evaluations, impact assessments, surveys
- white papers/strategies/action plans/consultation processes
- follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- important decisions/opinions from independent bodies/authorities

Developments related to the judiciary / independent authorities

- important case law by national courts
- important decisions/opinions from independent bodies/authorities

Any other relevant developments

- stakeholders are free to add any further information they deem relevant; however, this should be short and to the point.

You are invited to provide concrete information on what you see as significant developments either horizontally at European level (concerning several or all EU Member States), and/or at Member State level, focusing primarily on developments since January 2019. If you intend to, you will be able to provide input separately per Member State.

Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under “type of information”).

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

About you

*I am giving my contribution as

Civil society organisation/NGO

Organisation name250 character(s) maximum*

Open Dialogue Foundation

***Main Areas of Work**

- Justice System
- Anti-corruption
- Media Pluralism
- Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:500 character(s) maximum*

https://en.odfoundation.eu

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

807840314371-39

***Country of origin**

Please add the country of origin of your organisation

Poland

***First Name**

Katarzyna

***Surname**

Szczyńska

***Email Address of the organisation (this information will not be published)**

katarzyna.szczyńska@odfoundation.eu

***Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- Anonymous - Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name, transparency register number) will not be published.
- Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution.

- No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.
- I agree with the personal data protection provisions (https://ec.europa.eu/info/files/specific-privacy-statement-2020-rule-law-report-consultation_en).
-

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

Stakeholder_consultation_-_topics.pdf

Please provide any relevant information on horizontal developments here

[This is a second submission from the Open Dialogue Foundation due to an error that occurred in the submission number one]

The Open Dialogue Foundation (ODF) is committed to bridging the gap between European forums/institutions and experts/activists working on the ground. In particular, part of our mission is to provide European officials with first-hand knowledge as coming from experts/individuals/communities from countries where we conduct our human rights, democracy and the rule of law monitoring (mostly: former Soviet satellites and post-Soviet states).

In this submission we present the EC with insights on the justice system in Poland coming from a prominent judge as well as first-hand knowledge on media pluralism directly from a former employee of the state broadcaster. The Foundation plays a role of a middleman here: offering decentralised knowledge to European policymakers, on one hand, and giving a voice to stakeholders in the Member State, on the other. Facilitating a channel of communication, we do not take full responsibility for the accuracy of data and/or opinions stated in the form. Our policy is, however, to select the most reliable partners equipped with insider knowledge on a given matter.

For the purpose of this submission we are providing input from:

Dariusz Mazur - Judge of the Kraków Regional Court and Spokesperson of the Themis Association of Judges, against whom multiple disciplinary proceedings for defending the independent judiciary are pending;

Agnieszka Niklas-Bibik - Judge of the Słupsk Regional Court;

Piotr Owczarski - journalist, holding multiple posts in Polish Television (TVP) between 2008 and 2017; author of a petition to the EP on the situation of public media in Poland which led to the issue being currently examined by the Committee on Culture and Education.

Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2019, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden

Justice System - Poland

Independence

Appointment and selection of judges and prosecutors

3,000 character(s) maximum

Various legislative changes since 2017 have politicized the appointment of judges, incl.:

1) Minister of Justice (MoJ) was given wide powers over training of judges conducted by the National School of Judiciary and Public Prosecution (KSSiP) by amending the Act on KSSiP:

- MoJ appoints the KSSiP Director - without a contest, following a non-binding opinion of a politicized National Council of the Judiciary (NCJ) and a Prosecution Council subordinated to the Prosecutor General (the Act on KSSiP, Art 12)
- MoJ appoints/dismisses all members of the KSSiP Programme Council; directly or indirectly nominating its 6 candidates (Art. 6),
- commission organising contests for students is appointed wholly, directly or indirectly, by the MoJ (Art. 20),
- KSSiP lecturers receive an opinion of the Programme Council, but the MoJ's objection may effectively block a judge from becoming a lecturer (Art. 53b). Many "defiant" judges were also dismissed from a lecturer post in 2019 on the pretext of verification,
- judge examinations are organized by a 10-person committee nominated by the MoJ (8-directly, 2-indirectly). In addition, an "observer" from the Ministry participates in its work (Art. 32).

2) Appointing judge-visitors has been transferred to MoJ-Prosecutor General (the positions have been merged). Judge-visitors, i.a., assess the quality of work of apprentice judges and prepare written opinions in this respect, which are afterwards a basis for assessment of a judicial candidate by the NCJ. Being at the service of politicians, a judge-visitor can harm an ordinary judge by carrying out a biased inspection of his office.

3) NCJ is a collective body responsible for protecting the independence of the judiciary. One of its basic constitutional rights is choosing judicial candidates and presenting them to the President for approval. Unfortunately, in March 2018, NCJ was subordinated to the ruling party by changing the mode of election of its 15-members (see the answer to question 5)

4) Under the new NCJ the procedure for appointing Supreme Court (SC) judges has become even more defective than appointing ordinary court judges, especially in respect to the newly created Disciplinary Chamber and Chamber of Extraordinary Complaint and Public Affairs. First, contrary to the Constitution, the President's announcement of the competition for judges' positions was made without the countersignature of the PM. Second, contrary to EU standards, those participating in the competition were deprived of an effective judicial review of NCJ resolutions on the selection of candidates. Third, the neo-NCJ has also grossly reduced the criteria set for candidates to take office on the SC, dropping the requirement for them to provide the files of cases they are handling for assessment, as well as preparing opinions on the candidates based on the case files provided. Thus, it is reasonable to presume that candidates are appointed on grounds other than their merits.

Irremovability of judges, including transfers of judges and dismissal

3,000 character(s) maximum

The authorities took numerous actions designed to suspend or remove "defiant" judges, violating the constitutional guarantees of irremovability of judges (Art. 180). E.g.:

- In arbitrary and ungrounded decisions, the MoJ dismissed Justyna Koska-Janusz, Katarzyna Kruk and Krzysztof Ptasiwicz from a delegation to a higher court, punishing them for taking actions inconvenient for the executive;
- In July 2017 the parliamentary majority passed a new law permitting the removal of Supreme Court (SC) justices, incl. its First President whose term of office is constitutionally guaranteed; and giving the MoJ the right to appoint all new judges. The law did not enter into force with President Duda vetoing it after massive public protests;
- The new Act on the SC that followed, entering into force in 2018, enabled a limited purge of Poland's highest judicial authority. Lowering the retirement age allowed for replacing around 40% of the judges and terminating the term of office of the First President. This was, however, prevented by the interim measure applied by CJEU on 19 October 2018;
- In February 2020 the politically subordinated Disciplinary Chamber of the SC suspended Paweł Juszczyszyn, a judge from Olsztyn (due to him implementing the guidelines contained in the CJEU judgment of 19 November 2019, establishing criteria under which the very Disciplinary Chamber can be considered independent and impartial). The suspension grossly breached the newly introduced rules on disciplinary procedure. The original decision of the Disciplinary Chamber of 23 December 2019, issued at the request of the newly-nominated president of the Regional Court in Olsztyn, contained a refusal of Juszczyszyn's suspension. According to the new rules on disciplinary proceedings (Art. 131 para. 2 and 4 of the Law on the Organization of Ordinary Courts) such a decision is valid and cannot be challenged. Thus, the Disciplinary Chamber bench, as the second instance court, was required to reject the disciplinary commissioner's appeal as being inadmissible;
- Transferring of "defiant" judges between court divisions has become a measure of repression applied by newly nominated presidents of courts (appointed arbitrarily by the MoJ after the amendments to the Law on Organization of Ordinary Courts entered into force in August 2017). This was applied e.g. in respect of judge Waldemar Żurek, ex spokesman of the NCJ;
- Recently, a provision on the possibility of transfer of judges was introduced in the so-called "Covid Act" (Art. 15zsz5). It allows the presidents of courts to transfer judges without seeking the opinion of a court college. Alarmingly, the provision does not indicate any criteria justifying the decision on a transfer; and an appeal of a judge against such a decision does not suspend its implementation. The provision will be applied for another year after the pandemic ends which suggests that the real purpose of the provision is to repress "defiant" judges.

Promotion of judges and prosecutors

3,000 character(s) maximum

Promotion of judges to senior positions remains in the hands of the National Council of the Judiciary (NCJ), which was subordinated to the ruling camp (see answers to question 1 and 5). The NCJ was turned from the effective guardian of judicial independence into a body suppressing independence of the judiciary. The neo-NCJ generally rejects judges applying for promotion who are recommended by assemblies of courts; instead the body promotes poor judges, who guarantee loyalty to newly nominated presidents of court. In one of its opinions concerning such a candidate the neo-NCJ stipulated: "the fact that the candidate has the high rate of judgements overturned by the second instance court proves his independent way of thinking". Political loyalty, as opposed to merit, has become an important factor in promotion of judges.

The 2016 Act on the Public Prosecutor's Office strengthens the power of the Prosecutor General in matters of staffing, at the expense of heads of other levels of the Public Prosecutor's Office. Specifically, the Prosecutor General, at the request of the National Public Prosecutor, appoints and dismisses chief prosecutors of high regional, regional and district prosecutor's offices (Art. 15 § 1 of the Act on the Public Prosecutor's Office). This is tantamount to withdrawing the requirement for tenure of official prosecutors, and, with the Prosecutor General being able to introduce any arbitrary changes in official positions in the Prosecutor's Office, exposes prosecutors to the risk of availability. Previously, under the 2009 Act on the Public Prosecutor's Office, the heads of the Appellate and Regional Public Prosecutor's Office were appointed for six-year terms, and the heads of District Public Prosecutor's Office for four-year terms, while their dismissal before the end of their term could take place only in the cases exhaustively listed in the Act (e.g. in the event of permanent incapacity to perform duties due to illness). What is more, although as a general rule under the new law candidates for vacant positions in a district prosecutor's office are appointed after winning a competition for an opening, Art. 80 of the Act on the Public Prosecutor's Office gives the Prosecutor General the right to appoint "in justified cases" to those positions a candidate without conducting a competition.

The media describe many situations in which young prosecutors without professional and managerial experience are promoted to top positions in the prosecutor's office, which is seen as a reward for making procedural decisions in line with the interests of the ruling camp.

Allocation of cases in courts

3,000 character(s) maximum

Since the beginning of 2018, a random assignment of cases has been introduced in Polish courts, which entails a central computer using a random number generator. In particular, after registering cases flowing into the departments of courts, the new system randomly assigns them to individual judges in a given department. The system also takes into account their type dividing cases into several categories based on their size and time consumption. In contrast, the previously functioning mechanism allocated cases in the order in which they were received following the alphabetical list of judges of a given department. The new system is presented as a flagship achievement of the so-called "great reform" of the justice system, which is to lead to an even, objective, transparent, and, at the same time, fully random assignment of cases, which is in line with international standards.

Serious reservations, however, have been raised regarding the system that has been operating for over two years now. Firstly, neither the information about the company that prepared the Random Assignment System, nor the source code and algorithm that governs the system's operation were disclosed. In fact, this concealment of operating principles makes the current system less transparent than the previous one. Secondly, in 2019, the MoJ introduced a Regulation on the operation of common courts that contradicts the Act on the Organization of Common Courts and the random assignment rule. With presidents of courts being granted the right to determine the division of activities of judges they can possibly interfere in the random assignment of cases. This was pointed out even by the Government Legislation Center which generally sides with the ruling camp and the MoJ.

Thirdly, the press often observes disparities between loyal and "disobedient" judges. The former, whose loyalty was rewarded with promotions to high-ranking positions, seem to also be privileged by the case allocation system, enjoying a disproportionately small workload. It should be added, however, that an uneven allocation of cases among judges is common. Finally, the current system made handling cases by appellate panels less smooth. This is due to the amendments to the Regulation on functioning of common courts that excluded the possibility of appeal departments being ruled by permanent multi-person panels, and causing much organizational confusion.

The truth of the matter is that objective assessment of the system's operation and fairness is impossible without the ministry disclosing information on its operating principles. This lack of transparency is indisputable and highly contrasts with the transparency of the solution that was used before.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3,000 character(s) maximum

The National Council of the Judiciary (NCJ) is a collective body responsible for protecting the independence of judges and courts. It consists of 25 members (a representative of the President, the MoJ, 4 MPs, 2 senators, the First Presidents of the Supreme Court and of the Supreme Administrative Court, and 15 judges). Its basic constitutional rights are: choosing judicial candidates and candidates for higher judicial positions and presenting them to the President for approval; formulating the judicial code of ethics; issuing opinions about legal acts on the judiciary and challenging them before the Constitutional Court; commencing disciplinary proceedings against judges.

In March 2018, the NCJ was captured by the ruling camp via changing the mode of election of its 15 judge-members. While before the 15 judge-members were elected from among the judges by their "self-government" bodies, they are now elected by the Parliament, which violates Art. 187 (1) of the Constitution. Having had a majority in the parliament, PiS took control of no fewer than 15 votes in the 25-member NCJ, which generally adopts resolutions by an absolute majority. As confirmed in February 2020, the election of the neo-NCJ was invalid, even in light of the new, unconstitutional law pushed by PiS. Most notably, one of its members lacked the required 25 signatures from judges supporting his candidacy. The whole process of collecting signatures, however, was corrupt. Many of those who supported 11 out of 15 candidates received promotions or financial benefits in return for their signatures.

Hence, the neo-NCJ cannot constitute a democratic representation of the Polish judiciary which, notabene, was declared to be one of the main objectives of the "great reform". Instead, the body consists of a group of people guaranteeing political loyalty to the ruling camp, whose election was substantially influenced by the MoJ. Most strikingly, as reported by the media, 4 out of the 15 neo-NCJ judge-members (Drajewicz, Nawacki, Dudzicz, Puchalski) were part of the so-called 'troll farm at the Ministry of Justice'.

The neo-NCJ was turned into a major PiS instrument of destruction of the rule of law and judicial independence, e.g.:

- In December 2018, the NCJ decreed it punishable for a judge to wear a T-shirts with the word "Konstytucja"; the way in which many judges manifested their support for upholding the rule of law;
- In its November 2018 statement, NCJ declared the President of the Criminal Chamber of the Supreme Court (SC), Stanisław Zabłocki, "unworthy" of his post since - in line with the CJEU Order of 19 Oct 2018 - he returned to his office after having been previously forced to retire;
- The neo-NCJ neither defended the SC when the authorities tried to remove its judges by lowering the retirement age; nor criticized the introduction of the "Muzzle Law" that violates the Constitution and the European law. It also did not defend politically repressed judges.

Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

3,000 character(s) maximum

In 2018 PiS changed the procedure for disciplinary proceedings for judges, in particular:

- The powers of MoJ-Prosecutor General were broadened. The MoJ elects judges of the 1st instance disciplinary courts and the Main Disciplinary Commissioner and his 2 deputies. He can also appoint a so-called "ad hoc disciplinary commissioner" for a particular judge. Moreover, the MoJ gained significant influence on disciplinary proceedings, incl. the power to overrule a disciplinary commissioner's refusal to initiate a proceeding. Hence, a judge can now become a perpetual suspect;
- Violating the right to defence, a disciplinary hearing can be held in a justified absence of a judge or his counsel;
- Evidence obtained without judicial control and in violation of law, incl. illegal wiretaps, can be used in proceedings;
- The repeal of a judge's immunity can take place under a simplified 24-hour procedure;
- The prohibition of reformatio in peius was eliminated; thus, contrary to classical criminal proceedings, a person acquitted by the first instance disciplinary court can be found guilty by the Disciplinary Chamber of the Supreme Court (SC) and has no possibility of a classical remedy (only a "horizontal appeal" to another bench applies).

Finally, a new Disciplinary Chamber of the SC was created; its members elected by the politicized neo-NCJ. The body serves as a 2nd instance disciplinary court for prosecutors and ordinary court judges; and a 1st and 2nd for SC judges. Taking into account its main components being separate from the SC (a separate office, spokesperson, budget, procedures and president independent from the SC First President), the chamber is, in fact, a separate specialized court. The Polish Constitution allows the creation of such a court only in times of war (art. 175(2)). It is also not a court in the meaning of art. 6 of ECHR and art. 47 of EU CFR

All of this gave rise to an inquisitorial, politised model of disciplinary proceedings against judges, whose procedural rights are severely restricted (see: http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supervision_second-publication.pdf). Between 2018-2019, disciplinary commissioners appointed by the MoJ initiated numerous retaliatory explanatory and disciplinary proceedings. The following actions sufficed to trigger proceedings: asking the CJEU to give a preliminary ruling; referring questions to the SC; criticising the PiS "reform" of the judiciary; or organising trainings on the basics of law for children and youth (see also: the 2020 report by the Association of Judges "Iustitia" <https://oko.press/images/2020/02/Raport-po-angielsku.pdf>). The report by the association of judges "Themis" lists 78 judges facing disciplinary, criminal or administrative measures for political reasons (see: <http://themis-sedziowie.eu/materials-in-english/legal-harassment-of-polish-judges-report-for-the-needs-of-eu-justice-scoreboard-2020-updated-as-of-24-march-2020/>).

Remuneration/bonuses for judges and prosecutors

3,000 character(s) maximum

A. Judges

The principles of remuneration for judges and prosecutors are enshrined in the law. The remuneration of judges holding equivalent judicial positions varies by seniority or function.

The basis for determining a basic salary of a judge in a given year is the average salary in the second quarter of the previous year, published in the Official Journal "Monitor Polski" by the President of the Central Statistical Office (pursuant to art. 20 point 2 of the Act of 17 December 1998 on pensions from the Social Insurance Fund; Journal of Laws of 2020, item 53). Basic remuneration of a judge is determined via fixed rates and multipliers applied to a base pay; e.g.: from their 6th year of service judges get an extra 5% of the basic salary which then increases by 1% each year until it reaches 120% of the basic salary. The judge cannot take on additional employment, except for didactic or scientific positions provided that it does not amount to a full-time employment and does not interfere with performing the duties of a judge. Judges are obliged to notify their superiors about the intention to take on an additional job who can block it if they think it might interfere with the judges performing their duties, weaken their impartiality or undermine the dignity of the office (a ordinary judge has to notify a president of his court; court presidents notify the MoJ). From 2017, a judge cannot appeal a denial of taking on an additional job which was permitted under the previous system.

The "obedient" judges are now additionally appointed lecturers at the National School of the Judiciary and the Prosecutor's Office, and/or to commissions responsible for conducting examinations for lawyers or legal advisors, and/or electoral commissions. These judges, usually lacking experience and managerial qualifications, are also appointed by the MoJ to be presidents of courts, enjoying higher salaries, while their scope of duties is reduced (see: <https://wyborcza.pl/7,166575,25240209,krolowie-zycia-ziobry-sedziowie.html>).

B. Prosecutors

In addition to the basic salary, determined in a similar way as for judges, prosecutors are entitled to a special allowance delegated to the National Prosecutor's Office, School of Judiciary and Ministry of Justice (art. 111 of the Act of January 28, 2016 Law on the Prosecutor's Office).

Prosecutors who fulfill their duties in an exemplary fashion may be rewarded by the Prosecutor General. The rules for awarding prizes are non-transparent and arbitrary, and information about the prizes and bonuses awarded, in general, is not publically available. However, the independent Association of Prosecutors "Lex Super Omnia" in its report published information on financial prizes for prosecutors in 2019 (see the Chapter 3: <https://oko.press/images/2019/08/Kr%C3%B3lowie-%C5%BCycia-w-prokuraturze.pdf>).

Independence/autonomy of the prosecution service

3,000 character(s) maximum

Pursuant to the Act on the Prosecution Service of 28 January 2016, the functions of the MoJ and the Prosecutor General were merged. In such a way, Poland returned to the model known during the communist regime. In addition, criteria for becoming the Prosecutor General were significantly relaxed, enabling the appointment of an active politician to the position. Subsequently, the powers of the Prosecutor General were significantly broadened. In particular, the Prosecutor General can request initiating a number of operational and investigative procedures in pending preparatory proceedings right up to opening mail and installing wiretaps. He also has access to evidence obtained via these procedures. Worryingly, the Act on the Prosecution Service does not mention any conditions of admissibility, thereby putting no restrictions on such activity of the Prosecutor General, which gives rise to the risk of abuse. The Prosecutor General has also the right to: issue orders in relation to specific procedural steps in each case (Art. 7 § 2 and § 3 of the Act); revoke or change a decision of a subordinate prosecutor (Art. 8); and to take over cases from subordinate prosecutors of any levels (Art 9 § 2). As a result, he is not only the supervisor of prosecutors but also a "super-prosecutor" equipped with investigative powers himself.

The provisions of additional law accompanying the Act on the Public Prosecutor's Office, (titled "Regulations implementing the Act on the Public Prosecutor's Office") implemented under the pretext of the reorganization of the office, enabled a transfer of "unwelcome" prosecutors to different official positions. In this way, 113 prosecutors holding top managerial positions, e.g. in the Appeal and Regional Prosecutor's Offices, were transferred by the Prosecutor General to ordinary posts in the lower Prosecutor's Offices at the district level. To avoid humiliation and politicisation, many prosecutors who were expecting demotion, decided to take advantage of early pension entitlements.

In response to the changes another group of 50 prosecutors, who have been demoted, established an association called "Lex Super Omnia" (Law Above All). Its association, similarly to prosecutors issuing decisions inconvenient for the ruling camp, face numerous disciplinary proceedings. The most recent example is the case of Ewa Wrzosek who in April commenced a criminal proceeding regarding holding the presidential elections during the pandemic (causing a risk to life is a criminal offence under art. 165 para.1 of the Penal Code). The investigation itself was discontinued in a record three hours, followed by a disciplinary proceeding initiated against Wrzosek. Finally, another administrative measure of repression is delegating the "defiant" prosecutors to prosecutor's offices far from their places of residence (with the most known cases here being those of prosecutors Mariusz Krason and Dariusz Wituszko).

Independence of the Bar (chamber/association of lawyers)

3,000 character(s) maximum

Association of professions of public trust are protected by the Constitution (art. 17). Despite no formal changes to bar regulations, the 28/11/2019 resolution on the SC's Disciplinary Chamber has drastically restricted lawyers' independence by enabling the Prosecutor General/MoJ to interfere in disciplinary proceedings.

According to Art. 91a section 1 of the Act on the Bar, the parties, the MoJ, the Ombudsman and the President of the Supreme Bar Council have right to a cassation appeal to the SC against a decision issued by the Higher Disciplinary Court. The provision is unambiguous, exhaustively listing the possible cases for an appeal against a decision of a disciplinary court. Despite this, in a resolution, the SC's Disciplinary Chamber (ruled unlawful by the CJEU, in an SC resolution and by a CJEU interim measure), accepted the possibility of applying Art. 521 para. 1 of the Code of Criminal Procedure, according to which "the PG (...) may lodge a cassation appeal against any final decision of a court".

Meanwhile, in parts devoted to disciplinary proceedings, the Law on Bar refers to the Code of Criminal Procedure only to the extent not regulated by this Act. Contrary to the statutory regulation, therefore, by extension of the abovementioned resolution (in a 7-person composition) the scope of the PG's admissible interference in disciplinary proceedings was extended. The subordination of the independent disciplinary judiciary of the bar to the SC Disciplinary Chamber, while letting the MoJ influence the proceeding, is a serious violation of rights and freedoms. For Bars to be independent the disciplinary proceedings must be free from political pressure.

The adoption of the resolution involved lawyer Roman Giertych, representing fmr PM Donald Tusk, who harshly criticized the activities of the prosecutor's office investigating the Smoleńsk crash. According to the national prosecutor, Giertych, when assessing the investigators' activities, abused his right to speak, resulting in disciplinary charges. Both the disciplinary commissioner of the bar and the disciplinary court of the Warsaw Chamber finally discontinued the proceedings. This disciplinary court decision was appealed by the PG, citing Art. 521 of the Code of Criminal Procedure, providing for the PG's competence to lodge a cassation appeal against any final court decision.

<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20dsi%2067-18.pdf>

<http://www.sn.pl/sites/orzecznictwo/orzeczenia3/ii%20dsi%2067-18-2.pdf>

The case resulted in the disciplinary court requesting a preliminary ruling from the CJEU (registered under no. C-55/20).

See:

<https://wyborcza.pl/7,75398,25684827,dyscyplinarki-adwokatow-pod-nadzorem-ziobry-adwokaci-pytaja.html>

<https://www.rp.pl/Adwokaci/302099944-Duze-zamieszenie-z-adwokackim-sadem-i-pytaniem-do-TSUE.html>

[http://curia.europa.eu/juris/showPdf.jsf?](http://curia.europa.eu/juris/showPdf.jsf?text=&docid=225608&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=847484)

[text=&docid=225608&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=847484](http://curia.europa.eu/juris/showPdf.jsf?text=&docid=225608&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=847484)
4

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3,000 character(s) maximum

In September 2017, the authorities orchestrated a massive smear campaign against judges. Financed by the 17 biggest state-owned companies, all headed by PiS nominees, it cost over 2 mln EUR. The campaign was conducted by the Polish National Foundation (PFN). Although the PFN's statutory objective is to promote Poland abroad, it carried out a campaign aimed at slandering judges in Poland. Despite the government claiming the campaign was to promote their justice system reform, it was in fact a black PR action aimed at defaming the judiciary by tendentiously describing disciplinary proceedings against some judges, and, real or alleged, court mistakes. While some of the described situations are true, others are manipulated or even fake.

PiS politicians also keep defaming the judiciary in their speeches. Prime Minister Morawiecki in numerous speeches (e.g. Dec 2017 - interview in the Washington Examiner, and meeting with President Macron; Jan 2018 - interview for European journalists; April 2019 - statement for Le Figaro; April 2019 - speech at New York University) pushed two theses:

- Polish judges had served in communist-era courts - completely absurd, as the average age of a judge is 42, so 30 years ago, when communism collapsed, he/she was 12;
- Polish judges are corrupt - equally ridiculous, according to the Supreme Court (SC) data, between 2007-2017, only one judge was disciplined for taking a bribe (after which he was removed from his post).

In August 2019 independent media investigations revealed the existence of a special task force in the Ministry of Justice headed by the deputy MoJ, Łukasz Piebiak, dubbed "a troll farm in the Ministry of Justice". This group consisted of 13 persons including 4 members of the neo-NCJ, 2 deputies of the Main Disciplinary Commissioner for Judges and 1 judge of the newly created Disciplinary Chamber of the SC. The group coordinated a smear campaign against defiant judges, especially those active in judges associations. It cooperated with internet haters providing them with information about alleged details from judges' private lives, as well as their personal data, and classified or semi-classified documents from their personnel files and files of disciplinary proceedings. In spite of the fact that the slanderous online campaign against judges could constitute multiple crimes - including stalking, illegal disclosure of information on criminal and disciplinary proceedings, insulting a public official, slander in the mass media, illegal personal data processing and perhaps even operating within an organized criminal group - no effective investigative measures have been taken. This is hardly surprising if we take under consideration that there are clues that the MoJ, Zbigniew Ziobro, knew about these activities and fully accepted them.

Other - please specify

3,000 character(s) maximum

In 2016 the Internal Affairs Dept of the State Prosecution Service was established to prosecute judges and prosecutors for crimes. Positioning the body at the top level of the prosecution service appears to suggest serious corruption among them. This is not confirmed, however, by statistics. In 2+ years of its operation, having examined 1100+ complaints, only 7 proceedings were commenced (against 5 prosecutors and 2 judges). Given roughly 10,000 judges and 6,000+ prosecutors in Poland, this is insignificant. Thus, the mere fact of its establishment can be regarded as an attempt to harass judges and prosecutors.

Another threat to the independence of the judiciary is the 14 Feb 2020 so-called Muzzle Law - a comprehensive legal act amending the acts on the organization of common courts, the SC, and the NCJ. The law seriously threatens the independence of the judiciary (impairing judicial self-government and enabling the political subordination of the future SC First President). It also prevents common courts and the SC judges from implementing the 19/11/2019 CJEU judgment. Namely, questioning the status of judges appointed with the participation of the neo-NCJ (incl. by requesting a CJEU preliminary ruling), has become a disciplinary tort, and only the SC's neo-NCJ-filled Chamber of Extraordinary Complaint and Public Affairs (IKNiSP) is entitled to examine their status. The "Muzzle Law" thus violates the principles of loyal cooperation, direct effect and primacy of EU law, in addition to violating Art. 267 TFEU.

Furthermore, the term of office of the current SC First President expired in April 2020. The history of the Constitutional Court shows that, when the ruling camp has a small majority of 'its own' judges and 'its own' President, it gains effective control over a top Polish judicial authority. The political subordination of the SC has potentially devastating effects:

- EU institutions will lose a partner who ensures the proper and uniform interpretation of EU law in Poland. Only an independent SC, thanks to its authority and central position, is able to ensure both uniformity in the application of EU law and an appropriate balance between the rule of law and legal certainty (as exemplified by the 23 Jan resolution);
- It can break the moral backbone and the independence of many of the 10.000 judges of ordinary courts who perceive the "old" part of the SC as a symbol of judicial independence.

Amendments introduced to the Law on the SC provide for a minority of pseudo-judges of the SC (appointed by the politicized neo-NCJ) to elect 1 of 5 candidates for First President to then be nominated by president Duda. The fact that he has already appointed Kamil Zaradkiewicz (promoted by the current MoJ/PG) to the position of interim president until the election of First President clearly indicates the intention of political subordination of the SC (see: <http://themis-sedziowie.eu/wp-content/uploads/2020/02/Newsletter.pdf>).

Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Accessibility of courts (e.g. court fees, legal aid)

3,000 character(s) maximum

From 21/07/2019, Art. 25b para. 1 of the Act on court costs in civil cases was introduced, stating: "A fixed fee of PLN 100 shall be collected from an application for the delivery of a decision or order with reasons given within 1 week from the date of delivery." According to the current wording of the Code of Civil Procedure, delivery of a judgment, decision or order to a party together with a written opinion is required for an effective appeal (art. 369 para. 1 of the Civil Procedure Code and art. 394 para. 2 of the Civil Code). Earlier, in this type of formal defect, the party was asked to pay the court a fee within a week. The situation was complicated by 7/11/2019 amendments to the Code of Civil Procedure. The provision of Art. 328 § 4 of the Code of Civil Procedure was amended to state that the court shall reject an inadmissible, late, unpaid or deficient application that has not been removed despite being summoned. This regulation develops the existing Art. 328 § 1 Sentence 2 of the Code of Civil Procedure by extending the grounds to reject applications for written opinions in case of non-payment. Therefore, at present the court rejects unpaid applications. Procedurally, there is a doubt whether the unpaid application is also covered by the corrective procedure consisting in a request to remedy the deficiencies, which results from the imprecise wording of Art. 328 § 4 of the Code of Civil Procedure. This, in turn, risks the rejection of applications that do not meet the fiscal requirement, without first remedying the deficiency by paying the amount due. Rejection closes the appeal.

Furthermore, an application for service of a written opinion is subject to a fee even when the appeal itself is free. Such an application fee for the written opinion of each decision limits the right to a court, because for many people, who apply for financial hardship exemptions from the costs of proceedings, it constitutes an economic barrier.

This fee covers all applications for drafting and delivery of a written opinion, including those issued in the course of proceedings (e.g. refusal to appoint an official representative). The appeal procedure against these provisions is free, while the stage preceding the complaint is the application for a written opinion, which is subject to payment. This is an obvious inconsistency which affects poor people who use state aid in civil proceedings.

The fee for a written opinion is fixed, so in proceedings with a low value of the subject of the litigation it exceeds the fee from the appeal - which makes the fee disproportionate.

The introduction of a fee for written opinions is contrary to the constitutional principle of loyal treatment of citizens by a democratic state ruled by law (Art. 2 of the Constitution). Thus, its introduction limits the parties' rights in court proceedings, incl. the right to court.

Resources of the judiciary (human/financial)

3,000 character(s) maximum

According to Ministry of Justice data, spending on justice increases each year (see: <https://www.rp.pl/Sedziowie-i-sady/308289910-Miliard-wiecej-na-sadownictwo-w-projekcie-budzetu-panstwa-na-2020-r.html>).

Between 2016-2018, vacant judicial posts were not announced, or only to a small extent. This was due to the fact that the government did not want vacant judicial posts to be filled by judges elected by the "old" National Council of the Judiciary (NCJ). Judicial competitions were announced only after the act on the NCJ was changed and new judge-members were appointed in March 2018. The first competitions for judicial positions took place in September 2018 and concerned vacancies at the Supreme Court (SC). The rules for appointing judges to the SC were changed in such a way that it was easier to become a SC judge than a common court judge. According to the judicial association "Iustitia", at the beginning of 2019 there were about 700 vacant judicial posts in common courts and the number is still increasing, mainly due to retirement (see:

https://www.iustitia.pl/images/pliki/infpubliczna/liczba_i_miejsce_nieobsadzonych_etatow.pdf).

The increase in the number of judicial vacancies was already noticeable in 2018 in all courts. Most of them were in regional courts (452), in district courts (244) and appellate courts (115). In total, 811. For comparison, in 2017 there were 481 vacancies in courts, 101 of which in district courts, 208 in regional courts and 82 in appellate courts. In 2016, there were 558 vacancies in total (see:

<https://www.prawo.pl/prawnicy-sady/wakaty-w-sadach-dane-ms-za-2016-2018-r,494093.html>).

According to the Ministry of Justice, the reason for the doubling of vacant judicial posts, apart from retirement, was primarily the procedure for selecting judges and postponing the opinions of candidates by assemblies of judges. The fact is that the assemblies of judges, exercising their powers to give opinions on candidates, consistently from November 2018 postponed giving those opinions due to the pending CJEU proceedings regarding preliminary questions, incl. the method of selecting judges. However, the above was neglected by the neo-NCJ, which continued the competition procedures for appointing and promoting judges despite the lack of an opinion of assemblies of judges required by law. Therefore, this was not the real reason that suspended the appointment to the vacant judicial posts.

Considering the manner in which the NCJ proceeded, judges not recommended for positions appealed to the SC against resolutions to present opponents in the same competitions, exercising their statutory rights. The above prevented the NCJ from submitting a motion to the President to appoint the candidate of his choice (See: <https://www.prawo.pl/prawnicy-sady/wakaty-w-sadach-dane-ms-za-2016-2018-r,494093.html>).

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

3,000 character(s) maximum

In common courts, case management is carried out using two court systems, Currenda and Judge2. Judges have universal access to computers. There is also a system for assessing the level of service.

Officials and other court employees are subject to periodic assessment of qualifications. The assessment is made by the court director, taking into account the opinion of the direct superior and the qualifying commission appointed by the court director.

It is worth noting that giving opinions on the activities of courts for the previous year has been so far the competence of the Assemblies of Judges and the Meeting of Judges, and the opinion expressed by them was the basis for the assessment of court presidents by the Minister of Justice. After the statutory and personal changes in 2018, in early 2019 the Assemblies issued opinions on the activities of the courts for 2018. This was the first time when a significant number of presidents did not receive the judges' positive opinion for the activities of the courts in 2018. This applies in particular to the presidents nominated by the Minister of Justice in place of the presidents he dismissed prematurely, based on amendments to the act on the structure of common courts, in force since August 2017.

The above became the reason for the amendment of the act on the structure of ordinary courts and deprivation of judicial self-government, especially of higher courts, limiting their access to information on court activities. Pursuant to the "muzzle law" of Dec 20, 2019, the assembly of regional and appellate court judges was also deprived of the right to give opinions on court reports, reducing these activities to a mere hearing provided by the court president on the situation in the court. Only the assemblies of judges of district courts (the lower level of Polish ordinary courts) have the right not only to hear the president's statement, but also to express an opinion in this regard. The evaluation of the functioning of a given court provided to the MoJ is understandably different when supplied only by the court president himself, as opposed to a democratically-adopted report of the judges' assembly and the president's self-evaluation. Under the new scheme the judges' opinion is completely absent.

Furthermore, according to Art. 31zf of the COVID-19-counteracting Act of March 2, 2020, in the wording given by the Act of March 31, 2020 (Journal of Laws. from 2020 item 568), which shall enter into force on 31/03/2020, the Presidents of Courts have been released from the obligation to submit annual reports on their courts' activities. This is incomprehensible because reports (including statistical) on the activities of the courts have not only already been prepared, but some assemblies of judges not only heard these reports, but also gave opinions on them before the structure of the judicial self-government was changed. The changes came into force on February 14, 2020.

Other - please specify

3,000 character(s) maximum

Delegation of judges - the carrot and the stick in hands of the Minister of Justice.

It is worth noting the system of delegating judges, usually to higher courts. Existing procedures did not allow for delegation to a higher court, especially by two degrees. Such a possibility was only introduced by amendments to the Act on the structure of common courts introduced gradually after 2015, enabling the fast promotion of inexperienced judges of district courts, who have previously dealt with petty offences, and would now adjudicate complex cases e.g. in the Regional Court in the first instance, or appeals from decisions of the Regional Court, which they have never conducted before as first instance judges.

Since 2015, it is also often the case that judges are delegated to higher courts on the basis of unknown criteria, based on an arbitrary decision of the Minister of Justice. Most often, they were persons previously appointed by him to the position of presidents of courts as a reward for loyalty. They were promoted from district to regional or even appellate courts the same way, despite their scope of jurisdiction being minimal due to their functions as Presidents of District Courts. This does not improve the efficiency of adjudication, with a full-time post being blocked both in the home court and in the court of delegation by a judge with 10-25% of the normal judicial workload. There were also cases of judges being delegated to a higher court with no reason and immediately dismissed on the basis of an arbitrary decision of the Minister of Justice as punishment for their "defiance". This was the case e.g. with Justyna Koski-Janusz (Warsaw), Marek Nawrocki (Elblag), or the most famous case of dismissal of Paweł Juszczyzyn (Olsztyn). On the other hand, delegates to the higher courts were also deputy disciplinary commissioners for judges, initially as part of their home districts, and then to the Regional Court in Warsaw, the largest court in Poland, to appeal departments, with doubts raised as to the efficiency and stability of their current jurisprudence. Also the analysis of the revealed lists of support for NCJ candidates confirms the above doubts. Most of those who gave their support to them were promoted in this way to a higher court, which was preceded by a ministerial delegation to such a court.

The above indicates that the mechanism of delegating judges to higher level courts currently takes regardless of the necessary substantive qualifications and experience, based on arbitrary decisions of the Minister of Justice, which may raise doubts as to the independence of such delegated judges, owing their promotion to the executive. The described manner of managing human resources negatively affects the efficiency and quality, as well as the public image of the judiciary.

Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

Length of proceedings

3,000 character(s) maximum

There is no official data from the Ministry of Justice regarding the duration of court proceedings for 2019. The latest statistics refer to the first half of 2019. <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-jednoroczne/rok-2019/>

Public perception and surveys of the judicial community itself indicate a clear slowing down due to vacant judicial posts, lengthy appointment and promotion procedures and the new judges' doubtful status. The problem is not solved by delegation of judges and no other solutions have been proposed, with no dialogue with the judges being conducted. Instead, a system of oppression, repression and disciplinary proceedings is being implemented, hindering the efficiency of proceedings on a large scale. The issue is worsened by the instability of law, adopted without the required consultations, in a constitutionally questionable manner. No changes introduced to court procedures have proved effective so far.

According to a study by the "Iustitia" association, the judges' workload has increased, surpassing their capacities. It forecasted that an average of 423 unsettled cases per judge will remain by the end of 2019. For comparison, in 2015 it was 231 cases. The total number of outstanding cases is estimated at 4,106,901 for 2019, a 25% increase from 2018. In 2015, this ratio was 15%. <https://prawo.gazetaprawna.pl/artykuly/1433506,sady-referaty-sedziow-liczba-spraw-iustitia-reforma-sadownictwa.html>

The length of proceedings may be further increased by the Act of 20 December 2019 regarding applications for recusal. The SC Chamber of Extraordinary Control and Public Affairs (IKNiSP) took jurisdiction over examining applications for the recusal of a judge or to designate a new court for the proceedings, also when related to allegations of a lack of independence of the court or the judge. With the new law the court examining the case shall immediately forward the request to the President of the IKNiSP. This will not stop the proceedings, but it is difficult to imagine how a court will proceed without the case file. Neither the court examining the case nor IKNiSP are able to examine the application in substantive terms, raising doubts as to the constitutionality of the new law and possibly breaching the citizens' right to a court. Pursuant to the resolution of the Supreme Court of January 23, 2020, IKNiSP is not competent to perform judicial decisions.

In addition, amendments to the criminal and civil procedures entered into force in 2019 to accelerate court proceedings. Due to their nature, these changes can only be assessed in retrospect. However, already at the legislative stage, they were often criticized as dysfunctional and chaotic. Their common theme was reversing previously introduced changes (e.g. the so-called great reform of the criminal procedure introduced in 2015). <https://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/Sady%20powszechne.pdf>

Enforcement of judgements

3,000 character(s) maximum

We've been observing in recent years an undermining of the judiciary by the non-execution of both common and administrative court judgments by public authorities, especially when they concern legal changes implemented by the current ruling majority. There has also been a tendency recently of public authorities unlawfully subjecting matters reserved exclusively to the judicial sphere of courts (e.g. the resolution of the Supreme Court of 23 January 2020) to the judgment of the politicized Constitutional Tribunal.

The practice of non-enforcement of judicial decisions began with the Prime Minister's Chancellery's refusal to publish 3 judgments of the "old" Constitutional Court, starting with the judgment of December 3, 2015. It was the first such situation in Polish history, leading to the current constitutional crisis.

Non-execution of court judgments also concerned, among others:

- Security orders issued by the Supreme Administrative Court in connection with appeals of candidates for judges of the Supreme Court, the addressees of which were the National Council of the Judiciary and the President. Despite an injunction applied by the court, the NCJ not only forwarded its resolution on presenting the recommended candidates to the President, but the latter appointed judges to the Supreme Court, which became the source of the current crisis related to the status of judges (regarding, among others, judges of the two new SC chambers).

<https://www.prezydent.pl/kancelaria/aktywnosc-ministrow/art,1410,mucha-nsa-nie-jest-wlasciwy-do-ingerowania-w-zakres-kompetencji-prezydenta.html>

- The final judgment of the Supreme Administrative Court and the decision of the judge of the District Court in Olsztyn (Paweł Juszczyzyn) regarding the disclosure of public information in the form of support lists for NCJ candidates (disclosed only on February 14, 2020, i.e. a year and a half after the judgment was issued, when a newspaper attained the contents of the lists and began publishing them).

<https://wiadomosci.gazeta.pl/wiadomosci/7,114884,25631230,wsa-uchylil-postanowienie-uodo-listy-poparcia-do-krs-maja-byc.html>

- Court rulings regarding the so-called "Decommunisation Act" adopted in 2016, lowering pensions of former officers of uniformed services; in December 2019, the Supreme Administrative Court issued 18 verdicts in which it stated that the minister had no right to refuse former officers the restoring of their full pension; despite the court's ruling, the minister did not withdraw the reduction decision; this situation may affect 4669 people who have asked the ministry to restore their pensions;

- The resolution of the Supreme Court of January 23, 2020 implementing the CJEU's preliminary ruling of November 19, 2019, as well as the CJEU injunction on the application of an interim measure of April 8, 2020 (both concern the Disciplinary Chamber of the Supreme Court).

Other - please specify

3,000 character(s) maximum

The so-called "judiciary reform" should be recognized primarily as an attack on the independence of the judiciary, as demonstrated by the political subordination of the National Council of the Judiciary and the two newly created Supreme Court chambers, as well as the politicising of the election of the SC's First President. It is so far difficult to identify any elements of the so-called reform which would increase transparency, improve the courts' efficiency or increase the stability of case-law. On the contrary, chaotic staff changes in the positions of presidents of courts, where the main criterion for appointing successors to presidents prematurely removed from their positions was loyalty to the MoJ, resulted in a deterioration in the courts' management quality. At the same time the random case assignment system hampered the case processing rate. Furthermore, an increasing number of judges are experiencing political persecution by disciplinary commissioners and the MoJ's newly-appointed court presidents, which seriously impedes their work. A similar impediment to the judges' work is caused by constant changes in the provisions concerning both substantive law and rules of procedure, which are adopted hastily and without consulting judges or the legal community, resulting in numerous, obvious errors and inconsistency with other regulations (e.g. the new Act on the Supreme Court adopted in early 2018 was amended 9 times in the following 16 months). As a result, the average time a case is being processed has clearly increased.

<http://monitorkonstytucyjny.eu/archiwa/8846>

It is worth adding that, according to media reports, for about two years now the Ministry of Justice has been planning to "flatten" the structure of the justice system by eliminating one of the levels of the judiciary, as an alleged remedy to improve the functioning of the courts. At the same time, neither the assumptions of the project nor its analysis are known, and neither is - above all - how they are projected to accelerate court proceedings. On these changes, as well as on earlier elements of the judicial pseudo-reform, there is also no debate with the participation of judges. The above may constitute a dangerous tool for transferring judges to other courts without their consent, or their forced retirement under the guise of reorganization. It is worth noting that the mock reform of the public prosecutor's office in 2016 was mainly used to fill its highest positions with people loyal to the Minister of Justice. Similarly, this reorganisation could become an excuse to remove "defiant" judges from the profession, as the authorities will be able to arbitrarily decide whether to re-entrust each judge with the office or not..

<https://edgp.gazetaprawna.pl/e-wydanie/57167,20-stycznia-2020/70071,Prawnik/710918,Moze-byc-lepiej.-Jak-reformowac-sadownictwo.html>

Anti-Corruption Framework - Poland

The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

Authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant).

3,000 character(s) maximum

Prevention

Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information).

3,000 character(s) maximum

Rules on preventing conflict of interests in the public sector.

3,000 character(s) maximum

Measures in place to ensure Whistle-blower protection and encourage reporting of corruption.

3,000 character(s) maximum

Sectors with high-risks of corruption in a Member State and relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

3,000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector.

3,000 character(s) maximum

Repressive measures

Criminalisation of corruption and related offences.

3,000 character(s) maximum

Application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons).

3,000 character(s) maximum

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation).

3,000 character(s) maximum

Media Pluralism - Poland

Media regulatory authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media authorities and bodies.

3,000 character(s) maximum

Under the Law and Justice (PiS) government, politicisation of broadcasting regulators has reached unprecedented levels. Without formally changing the constitution, PiS, de facto, altered its dispositions, establishing, by statute, a new, subordinate media supervision body. Thereby, PiS created an anomalous institutional duopoly with two bodies regulating the media market, an arrangement hardly seen in other countries.

On New Year's Eve 2015, PiS introduced a new Council of National Media (RMN) overnight. The setting-up of RMN disempowered a constitutional body, the National Broadcasting Council (KRRiTV) by endowing the former with many of the tasks of the latter. Most notably, RMN overtook KRRiTV's supervision over the public media, incl. over appointing and dismissing of its employees.

Despite the Constitutional Tribunal ruling it unconstitutional for RMN to deprive KRRiTV of the power of appointment, since 2016 RMN has effectively engineered public media capture, purging supervisory, management and program boards of public media entities. The fate of thousands of public media employees rests entirely on the arbitrary decisions of the PiS-subordinated RMN. Its members are elected by parliament, and with a PiS-coalition majority, 3 out of 5 RMN's members are the party's representatives (2 of them serving as MP/MEP). Almost impossible to dismiss, secured by a 6-year long tenure, RMN's members enjoy much impunity. They remain deaf to appeals of purged journalists reporting cases of mobbing, violation of journalistic ethics and the lack of pluralism.

The RMN's personnel policy and its program line turned the public media into a government mouthpiece. PiS deputy speaker of parliament, Ryszard Terlecki, stated bluntly: "if the media think that they will occupy Poles in the coming months with their criticism of our (PiS') changes, it needs to be stopped. (...)".

The original regulatory body, KRRiTV, was politicised by PiS as well. It's headed by a PiS city councilor. In the last local election he ran for an office as the head KRRiTV, thus combining media control with a political function. The Council does not respond to complaints about the politicization of the public media, incl. hate speech, attacks on opposition politicians, and exclusive access it grants to PiS' representatives. KRRiTV also rejected conducting a full-scale monitoring of the public media coverage of the 2020 presidential campaign (that is heavily skewed in favour of the incumbent president associated with PiS). Although it is obliged to do so under the law, KRRiTV announced it would conduct a mere partial monitoring. Consistently with its abstruse way of operating, however, the exact procedure remains unknown. Journalist organizations have critically assessed the coverage of recent local/national/european elections, stating that public media favored PiS candidates.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

3,000 character(s) maximum

The appointment of head/members of boards of media authorities and bodies is opaque, non-transparent and highly politicized. In practice, appointments are subject to political and discretionary decisions of the ruling camp. The whole system violates the principles and standards of political independence of public media enshrined, inter alia, in the Council of Europe's resolutions and recommendations as well as in Article 10 of the European Convention on Human Rights.

The toxic intertwining of politics and public media was evident in the recent dismissal of the head of KRRiTV, Jacek Kurski in March 2020. Not only the reason for the dismissal of the powerful CEO of the public broadcaster, TVP, was a behind-the-scenes political fight in the ranks of the ruling camp; but its procedure was also far from accurate. Kurski offered his dismissal to President Andrzej Duda even though it lies in the competence of the RMN; and when, ultimately, RMN rubber-stamped the decision made in the political corridors, it did so via e-mail correspondence, late on Friday. Hence, the single most important competence of RMN was executed in an expedite mechanism via email. As prof. Tadeusz Kowalski, media expert at the University of Warsaw, commented: "We operate in a country where procedures and law are of tertiary importance. The National Media Council is a decorative body, it is completely redundant".

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter)

3,000 character(s) maximum

This sphere acutely lacks transparency. Government ads are published in government-friendly media outlets which indicates that funds for media advertising are allocated in a heavily politicized way. The media outlets that are critical of the government, most notably "Gazeta Wyborcza" and "TVN24", receive little to no orders. Even in the COVID-19 context, the government didn't purchase ads on its prevention regulations in Gazeta Wyborcza that constitutes the largest Polish daily.

At the same time, the stream of cash flows to media favorable to the government, such as the public broadcaster, TVP, and the following private entities: "Sieci", "Do Rzeczy", "Gazeta Polska" and "Gazeta Polska Codziennie". In the last two years, state-owned companies doubled their expenses on ads. In absolute terms, between 2015 and 2019, they spent PLN 4,283 billion. One of the leading Polish media experts, prof. Tadeusz Kowalski from University of Warsaw, assesses that the state-owned enterprises spend their funds extremely inefficiently since most of the listed media outlets don't enjoy high readership.

Available statistics shed a light on the great disparities in the state-owned companies spendings on ads among various media actors. To provide an example: only in 2019, the public broadcaster, TVP, got PLN 300 million in ads, twice as much as in 2017; in contrast, the American-owned TVN media group, one of the biggest Polish television networks, got a mere 47 million. What's more, 49 and 45 percent of all ad revenue of government-friendly "Gazeta Polska" and "wSieci", respectively, came from state-owned enterprises. To call a spade a spade: this constitutes a camouflaged public aid aimed to support the government propaganda.

Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)
3,000 character(s) maximum

Public Television conducts a negative campaign on rule of law issues, favouring and defending its weakening rather than its promotion. The broadcaster is involved in a sustained process of attacking, harassing and defaming judges as part of the government's black PR campaign, supporting its judiciary "reform". One example is that of judge Piotr Gaćiarek. He was revealed as one of the victims of the Ministry of Justice's organised hate campaign, masterminded and headed by former deputy minister Łukasz Piebiak. The campaign's aim was to discredit judges, who publicly expressed their criticism of the ministry's activities. Judge Gaćiarek was presented in a biased report, using unverified information from his private life. Among reporters tasked with defaming Gaćiarek were leading TVP journalists and anchors such as Michał Rachoń, Jacek Łęcki and Michał Adamczyk, according to the Press monthly. If true, this would violate the law on radio and television.

Public Television has been involved in a wide array of campaigns targeting Polish judges. Programmes and reports aired in main news shows depicted them as thieves, crooks, defenders of criminals or subordinates of the previous government. A commonly used term to describe them is a "privileged caste". Stereotypes and narratives, used by PiS politicians, are commonly repeated, including that the "judiciary reform" aims at cleansing courts of former communist collaborators, or that "judges are irresponsible and should be eliminated, otherwise Poland will never become a normal state" - repeating after president Andrzej Duda. The campaign is further aided by the "Kasta" ("Caste") show on TVP Info, where journalists smear judges. "The show depicts stories of people being wronged by the justice system and court rulings raising justified doubt as to the integrity and intentions of the judges", to quote the head of the Television Information Agency, Jarosław Olechowski.

Rules governing transparency of media ownership

3,000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

3,000 character(s) maximum

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3,000 character(s) maximum

Law enforcement authorities increasingly tend to side with the government due to the politicisation of the public prosecutor's office, which now directly reports to Justice Minister and Prosecutor General Zbigniew Ziobro. Ziobro has ruthlessly replaced the public prosecutor office's staff with loyalists and often directly steers investigations. The author of this expertise has submitted a complaint to the National Prosecutor's Office regarding a possible series of crimes committed by Prime Minister Mateusz Morawiecki and the TVP chairman, who systematically cooperate in order to:

violate personal rights of political opponents;

defame and insult political opponents;

commit crimes against the protection of data;

commit crimes of illegal processing of personal information;

commit crimes of abuse of power and abuse of competences by a public official.

Newsweek journalists uncovered a report claiming that "on March 6th information was revealed of former TVP employee Piotr Owczarski, was planning to sue his former employer over mobbing and to request legal support from Donald Trump and the European Council. In reply to this a series of right-wing social media accounts, including TV_POLAKOW and Cat@net, supported a narrative ridiculing those accusations against TVP. The total number of accounts involved in this organised campaign was over 60." The National Prosecutor's Office transferred the case to the Regional Prosecutor's Office, which transferred it to the District Prosecutor's Office. No progress was made in the case since March 9th, 2020 other than moving the case around between prosecutors. It's an example of intentional prolongation of an investigation.

Access to information and public documents

3,000 character(s) maximum

Access to public information is becoming more and more restricted. Public information requests are not being examined, information is often not being provided. This concerns both requests from journalists and from citizens. The author of this expertise has submitted such a request to the public broadcaster with questions concerning spending on lawsuits brought by TVP. The broadcaster has not provided a reply within the legally-provided timeframe, violating Art 61 para 1 of the Constitution and Art 10 para 1 related to Art 13 para 1 of the law on access to public information.

The author has submitted a request to the Voivodeship Administrative Court for legal protection in the form of persuading a public body not adhering to its legal obligations. The case is being processed by the court.

There are multiple, similar cases pending. A growing number of people is being met with the passivity of public authorities and bodies.

Other - please specify

3,000 character(s) maximum

In the last 3 years the public media in Poland became politicised at an unprecedented scale. Public broadcasters do not adhere to journalistic integrity, limit pluralism, are biased, their content is not balanced. Pluralistic opinions are not being published, the diversity of information aired is severely limited. Quotes are purposefully manipulated, people are defamed and insulted. This takes place in a systemic, organised and ongoing manner, methodically violating elementary standards of journalistic ethics. It was confirmed by Reporters Without Borders Director general Christophe Deloire, who wrote "Party discourse and hate speech are still common in the public media, which were now transformed into a mouthpiece of government propaganda. New executives don't tolerate objection, nor neutrality, and fire defiant employees".

Public Television conducts espionage activities, which was confirmed by the deputy director of journalism in TVP Info Mariusz Kowalewski. Public Television also limits air time access of various groups, amplifying society's disdain for them, e.g. the LGBT community, whose members' dignity is violated by linking them to paedophilia, facts are being manipulated, a one-sided view of reality is being built as well as violence is condoned.

Other institutional issues related to checks and balances - Poland

The process for preparing and enacting laws

Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

3,000 character(s) maximum

Regime for constitutional review of laws.

3,000 character(s) maximum

Independent authorities

Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies;

3,000 character(s) maximum

Accessibility and judicial review of administrative decisions

Modalities of publication of administrative decisions and scope of judicial review

3,000 character(s) maximum

Implementation by the public administration and State institutions of final court decisions

3,000 character(s) maximum

The enabling framework for civil society

Measures regarding the framework for civil society organisations

3,000 character(s) maximum

Other - please specify

3,000 character(s) maximum

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