

**4 December 2017**

**Poland: Parliament must reject draft laws attacking judicial independence, urges ICJ**

The ICJ called today on the Polish Parliament (*Sejm*) to reject two draft laws that, if approved, would significantly undermine the independence of the judiciary.

The *Sejm* is [reportedly](#) set to approve tomorrow [draft bill no. 2002](#) that, among other measures, will allow Parliament and the Government to appoint a majority of the members of the National Judicial Council, the institution in charge of defending the independence of the judiciary and appointing judges.

This law gives the Polish legislature and executive, which have increasingly demonstrated deep disregard for human rights and the rule of law, undue influence over the judiciary.

Additionally, [draft bill no. 2003](#), which will also come before the Parliament for approval, will lower the age of retirement for Supreme Court judges from 70 to 65 years and allow the President of the Republic to decide which judges are to be reinstated.

"These draft laws tabled by President Duda are a direct blow to the principle of separation of powers, the bedrock of the rule of law," said Massimo Frigo, Senior Legal Adviser with the ICJ Europe Programme. "The changes made to the draft laws rejected by the President last July have not remedied in any way their adverse implications for judicial independence".

In July, President Andrzej Duda vetoed [two draft laws](#) approved by Parliament that would have automatically dismissed all judges of the Supreme Court and entrusted the Minister of Justice with any decision on their reappointment.

The provision on the appointment of the members of the National Judicial Council was also included in the draft laws rejected in July and has changed only with regard to the parliamentary majority needed for such appointments.

"These series of legislative attacks on the independence of the judiciary in Poland must stop. These actions are inconsistent with the international obligations of Poland to ensure the independence of judges," said Massimo Frigo.

"If these laws are approved and enter into force, this will be a decisive blow to the rule of law in Poland. A EU Member State that directly undermines the checks and balances of its own legal system threatens the founding values of the EU of the rule of law and respect for human rights, and makes it essential that the EU intervene through its article 7 procedure." he added.

An [article 7 procedure](#) can lead to a State losing its voting rights within the EU decision-making processes. It is triggered by the European institutions, or one third of Member States, when they consider that there is a "clear risk of a serious breach by a Member State" of EU values, among which the rule of law and human rights. It is the European Council that then decides on the exclusion, if it determines that the breach of these values is "serious and persistent".

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## **International standards**

Particularly in a context like present day Poland, removal of judges from a court, by another branch of government, without a fair and evidence-based individual process for each judge, is incompatible with international standards such as the [UN Basic Principles on the Independence of the Judiciary](#) (See, [ICJ Practitioners Guide no 13 on Judicial Accountability](#), pp. 99-104). The UN Basic Principles affirm, among other things, that:

*1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*

*2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

*10. ...Any method of judicial selection shall safeguard against judicial appointments for improper motives. ...*

*12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.*

*18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.*

*19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.*

*20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.*

Similar mass removals with politicization of the procedure for reinstatement and new appointments have been condemned as violations of States' international human rights obligations by, for instance, the UN Human Rights Committee acting under the [International Covenant on Civil and Political Rights](#), to which Poland is also party (see *Busyo, Wongodi, Matubaka et al v. Democratic Republic of the Congo*, UN Doc CCPR/C/7878/D/933/2000 (2003), and the Inter-American Court of Human Rights (see e.g. *Supreme Court of Justice (Quintana Coelle et al) v. Ecuador*, Series C No. 266 (2013) and *Constitutional Tribunal (Camba Campos et al) v. Ecuador*, Series C No. 268 (2013)).

Council of Europe standards, in the form of [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), provide among other things as follows:

*26. Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.*

*27. Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.*

*44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions*

*should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.*

*45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.*

*46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.*

*47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.*

*48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made.*

*49. Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.*

*50. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds.*

*69. Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate.*