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Poland: ICJ calls for immediate reinstatement of forcibly retired Supreme Court justices

The International Commission of Jurists (ICJ) condemned today the forced retirement of 27 out of 72 judges of the Supreme Court of Poland in defiance of the most basic principles on the independence of the judiciary.

"The forced retirement of a third of the Supreme Court under the new law on the judiciary amounts to an arbitrary dismissal of judges" said Róisín Pillay, Director of the ICJ Europe and Central Asia Programme, "It is a flagrant breach of a basic tenet of the independence of the judiciary, the security of tenure of judges."

The government claims the law and its implementing measure of forced retirements are aimed at improving the administration of justice. However, the ICJ considers them to be a deliberate attempt to destroy judicial independence and install executive control.

"We call on the Polish authorities to follow the EU's recommendations, abolish this draconian legislation and immediately reinstate the Supreme Court justices. Not to do so strikes at the very core of judicial independence", said Róisín Pillay. "Universal principles of judicial independence guaranteeing security of tenure were developed long ago exactly to safeguard the kind of abuse of political authority driving this forced retirement measure, whereby judges would serve at the pleasure of the government of the day".

The ICJ considers that the implementation of the new law on the Supreme Court and the dismissal of the 27 Supreme Court Justices directly contravenes the security of tenure of judges and, hence, the principle of judicial independence, as expressed in the UN Basic Principles on the Independence of the Judiciary, Council of Europe standards, the European Court of Human Rights' jurisprudence and the rule of law principle of the EU Treaties.

Background

Based on a new law on the Supreme Court that entered into force on 3 July, 27 out of 72 judges of the Supreme Court of Poland - a third of the Court - have been forced to retire or to apply to the President of the Republic for an extension of their mandate. The First President of the Supreme Court had her six-year mandate terminated before its expiry.

The new legislation changes the mandatory retirement age of judges of the Supreme Court from 70 to 65 years. The Supreme Justices may apply to the President of the Republic to have their mandate extended for a period of three years, renewable once.

The UN Basic Principles on the Independence of the Judiciary affirm:

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.

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.

The Council of Europe [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), provides that:

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.

In the similar case of *Baka v Hungary*, the Grand Chamber of the European Court of Human Rights stressed the "growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies are attaching to procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in respect of every decision affecting the termination of office of a judge".¹

The Court held that the dismissal by law of the President of the Supreme Court "can hardly be reconciled with the particular consideration to be given to the nature of the judicial function as an independent branch of State power and to the principle of the irremovability of judges, which – according to the Court's case-law and international and Council of Europe instruments – is a key element for the maintenance of judicial independence."²

The UN Special Rapporteur on the independence of the judiciary has recently reported, with regard to the new Polish law on the Supreme Court that "this draconian measure undermines both the security of tenure of sitting judges and the independence of the Supreme Court in general. The forced dismissal of a group of judges for general reasons not related to their individual capacity or behaviour also constitutes a flagrant breach of the principle of security of tenure of judges" ([Report to the UN Human Rights Council](#), June 2018, para. 55)

As called for by the [ICJ last December 2017](#), the European Commission has considered the current situation as undermining "the principle of judicial independence, including the irremovability of judges" and has triggered a procedure to suspend Poland from its EU voting rights under Article 7 of the Treaty of the European Union.

¹ Para 121.

² para. 172