



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Statement by the Executive Board of the ENCJ on the need to defend the independence of judges in Poland

Introduction

In recent years the Executive Board of the ENCJ had expressed repeatedly its serious concerns about developments regarding the independence of the judiciary in Poland. The Executive Board refers to its statements of 30 January 2017, 17 July 2017, 13 October 2017, 5 December 2017, and 17 September 2018. No steps were taken to allay the concerns expressed or to redress the problem identified.

On 17 September 2018, the ENCJ suspended the current Polish Council for the Judiciary (KRS) from membership of the ENCJ because it considered that the Polish KRS does not meet the condition for membership that a Judicial Council must be independent from the executive branch of the relevant Member State.

On 19 November 2019 the European Court of Justice gave judgement in a Polish case in which it set down criteria for assessing the independence of a court. One of those criteria is the independence of the body which appoints the members of a court from the executive branch of the relevant Member State. In Poland that body is the KRS.

As a reaction to the judgement of the Court of Justice, the Lower House of the Polish Parliament recently approved a draft law which stipulates in article 42a that it is unacceptable to question the powers of courts and tribunals', and 'it is unacceptable for a common court (..) to assess the compliance with the right to appoint a judge (..)'. Furthermore in article 107 it introduces a disciplinary tort for a judge who questions 'the existence of the official relationship of a judge'. In stipulating thus this Law, once adopted, affects the ability of Polish judges to judge a case in accordance with their duty based on European Union Law, especially the judgement of 19 November 2019 mentioned. That draft law is now with the Polish Senate for final approval.

As a matter of European Union Law every Polish judge is also an European Union judge and is required to apply European Union Law even where it conflicts with national law or to disapply provisions of national law which are incompatible with European Union Law.

Statement

The Executive Board of the ENCJ reiterates that it is the duty of every judge in the European Union to apply European Union Law without any restrictions - whatsoever - from other branches of a state. Judicial independence is indispensable in order to comply with this duty.

Furthermore the Executive Board of the ENCJ states that judicial independence is essential to guarantee the rights of the citizens of the European Union, is essential for mutual respect of the European Union's common values, is essential for mutual trust among European Union judges, and is

an essential pre-condition for the mutual recognition of judgements within the European Union. Without judicial independence the European Union will – eventually – cease to exist as a common space for Democracy and the Rule of Law.

The Executive Board of the ENCJ calls upon everyone in the European Union to defend the independence of judges and thus defend the European Union.

Brussels, 10 January 2020