

CCBE Statement on the Polish law establishing a State Committee for the Examination of Russian Impacts on internal Security

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries and, through them, more than 1 million European lawyers. The CCBE also acts as a consultative and intermediary body between its members and between the members and the institutions of the European Union on cross-border matters of mutual interest.

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Several areas of special concern to the CCBE include inter alia access to justice, the development of the rule of law, and the protection of clients through the promotion and defence of the core values of the profession. The CCBE always places great emphasis on the respect for the rule of law, democratic principles and fundamental rights.

The CCBE would like to express its concern over the adoption of a new law on the State Committee for the Examination of Russian influence on the internal security of Poland between 2007 and 2022.¹

This law violates the fundamental principles of democracy (Articles 2 and 10 of the TEU). It violates the principles of legality and non-retroactivity of sanctions (Article 49 EU Charter of Fundamental Rights (Charter)); general principles of legal certainty and res judicata; the rights to effective judicial protection (Article 47 of the Charter); the requirements of EU law relating to data protection (GDPR and Article 8 of the Charter).

The CCBE has the following concerns:

1. The right to professional secrecy will not be respected.

Article 32 of the new law in Poland prescribes the following:

“1. Persons who are obliged to respect professional secrecy of notaries, advocates, attorneys at law, doctors or journalists, can be interrogated with regards to the facts that are covered by the secrecy only when it is necessary to protect important interests of Poland or internal security, and establishing circumstances based on other evidence would be rendered too difficult.

2. In order to obtain approval to interrogate persons mentioned in par 1, the commission submits a written request to regional tribunal in Warsaw.. (...).”

¹ <https://dziennikustaw.gov.pl/D2023000103001.pdf>

Professional secrecy is fundamental to protect the information generated in the context of a relationship between a client and their lawyer in order to be best advised and defended. Any erosion of this principle is an erosion of every citizen's right to consult their lawyer in confidence.

The CCBE has repeatedly stressed the importance of professional secrecy and legal professional privilege. The European Court of Justice has expressly stated *"that confidentiality serves the requirements, the importance of which is recognized in all of the member states, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it"*, and added that the principle of *"the protection against disclosure afforded to written communications between lawyer and client is based principally on a recognition of the very nature of the legal profession, inasmuch as it contributes towards the maintenance of the rule of law, [...] that the rights of the defence must be respected"*.²

2. The right to have a case examined by an independent tribunal is violated;
3. There will be no participation of defence lawyers during proceedings which violates the fairness of the proceedings;
4. The proceedings will be, to a large extent, secret;
5. There will be no right to appeal the decision based on the correctness of the assessment of facts and the weighing of evidence as conducted by the Committee.

In this regard, the CCBE reiterates concerns voiced by the Polish Bar Council (*Naczelna Rada Adwokacka*) and its appeal to the Polish President³ followed by the position of the Presidium of the Polish Bar of Attorneys at Law (*Krajowa Izba Radców Prawnych*)⁴ as well as the European Commission position which opened an infringement procedure against Poland for violations of EU law⁵, and the law may be used as a political instrument to exclude individuals on the opposition side from political activity without a fair court trial.

The CCBE therefore calls for an immediate repeal of this new legislation by the Polish Parliament as the recent amendments are not sufficient to remedy the serious defects of this legislation.

² ECJ, 1982, AM&S (155/79)

³ Resolution of The Polish Bar Council dated 28 May 2023: <https://www.adwokatura.pl/z-zycia-nra/nra-zwraca-sie-do-prezydenta-rp-o-zawetowanie-ustawy-tzw-lex-tusk/page/2/>

⁴ <https://kirp.pl/stanowisko-prezydium-krajowej-rady-radcow-prawnych-ws-lex-tusk>

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3134