

CCBE STATEMENT ON POLAND

30/01/2020

The Council of Bars and Law Societies of Europe, hereafter the “CCBE”, representing the National Bars and Law Societies of 45 European countries, and through them more than 1.000.000 European Lawyers, underlines the value and importance of the rule of law, enshrined in Article 2 of the Treaty on the European Union, as one of the common values upon which the European Union is founded and as part of the common constitutional traditions of all Member States.

Since 2015, the CCBE has issued already several statements on the backsliding of the rule of law in Poland, following legislative initiatives resulting in the undermining of the independence of the judiciary.

Independent courts are the ultimate guarantee for a fair administration of justice and for upholding the rights and freedoms of citizens, as courts may be called to hold the government accountable for their decisions and actions infringing on civil rights and freedoms.

As reminded in the Polish Supreme Court’s Resolution of the Civil, Criminal and Labour & Social Security Chambers, of 23 January 2020, the independence and impartiality of courts is guaranteed by Article 45, item 1, of the Constitution of the Republic of Poland, Article 47 of the Charter of Fundamental Rights of the European Union and Article 6, clause 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The national legislator must comply with these fundamental principles and prescriptions in its legislative work.

Recent legislative developments in Poland, however, continue to threaten the independence of the judiciary and at the same time undermine the legal order or the European Order as well as the authority of the Court of Justice of the European Union.

In particular, the bill dated 12 December 2019 containing amendments to the Law on the organization of common courts, the Act on the Supreme Court and some other acts, introduces severe disciplinary measures against judges who would seek to verify the legality and constitutional legitimacy of the National Judiciary Council, the newly created Supreme Court chambers or other courts or tribunals.

This bill has been heavily criticized by independent international bodies and organisations such as the

- OSCE (the Organisation for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights) in its Urgent Interim Opinion on the said Bill, issued on 14 January 2020
- Venice Commission (the Council of Europe’s European Commission for Democracy through Law) in its opinion No. 977 / 2019 issued on 16th January 2020

who have asked the Polish authorities not to proceed with the Bill but to reconsider the amendments proposed in the said Bill.

The proposed changes are indeed in breach of European democratic standards and disrupt the principle of separation of powers between the judiciary and the executive. Approving them would seriously undermine not only the rule of law in Poland but also – as all our Member States are interacting in the Single Market – the legal order on which the Single Market and the European Union itself are based.

The CCBE favours a face-to-face dialogue– called for by EU Commissioner for Values and Transparency Věra Jourová during her visit on 28 January to Poland for meetings with the authorities, representatives of the government, the judiciary, business and civil society.

The CCBE is convinced that the “Forum for the Rule of Law” organised by the Polish Academy of Sciences (PAS) can be a good start to opening a dialogue and looking for long-term solutions. The Forum will be co-organised together with the Polish Academy of Learning and will take place on 31 January on the premises of PAS.

The CCBE therefore calls upon all involved authorities to participate in this Forum and give a chance to dialogue between authorities, judiciary and civil society, and seek for sustainable solutions.