



# SUPREME COURT

of the Republic of Poland

Disciplinary Chamber

Judicial Assembly

Warsaw, 11 June 2019

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the Disciplinary Chamber of the Supreme Court on the reform of the judiciary in Poland.

In the European public discourse over recent months, the reform of the judiciary in Poland has been a subject of in-depth interest. In particular, it includes the regulation of disciplinary proceedings against persons practising legal professions. Much focus has been placed on this issue both in the media and among the academia and legal practitioners. The increased interest in the reform is also reflected by the examination by the Court of Justice of the European Union of joined cases C-585/18, C-624/18 and C-625/18. Unfortunately, on the international stage, the reform of the judiciary in Poland has been presented in a negative light, which we consider to be unfair and unfounded.

The concern of the justices of the Supreme Court's Disciplinary Chamber about actions taken against Poland by bodies of the European Union stems from the fact that the Treaty on European Union precisely defines the division of competences between Member States and the European Union. According to it, the European Union may take action only on the basis of the powers conferred on it by the Treaties, and any competences not conferred upon the Union, including those regarding the organisation of the judiciary, remain with the individual Member States (Article 5 (2) of the Treaty on European Union). Furthermore, the European Union may not, by its own decision, increase, limit or modify the scope of its powers. This position is also underlined in the settled case-law of the Polish Constitutional Tribunal, according to which: "The European Community has no general competence (only states have it by virtue of sovereignty), but it has specific competence" (judgement of the Constitutional Tribunal of 11 May 2005, file ref. K 18/04, OTK-A 2005, No. 5, item 49).

When joining the European Union, each state commits itself to adopt and comply with the entire *acquis communautaire* and to accept common values and rules. It is therefore indisputable that all Member States are subject to the jurisdiction of the Court of Justice of the European Union. However, it should be borne in mind that the European Community has been founded from its inception on fundamental principles such as equality of Member States before the Treaties and respect for their national identities, inherent in their fundamental structures, political and constitutional (Article 4 (2) of the Treaty on European Union). Therefore, any action taken by the institutions of the European Union falling within the exclusive competence of the Member States, which includes organisation of the judiciary, should be considered as an unjustified transgression of

the constitutional identity of the Member States, which contradicts the fundamental principle of equality before the Treaties. From the point of view of all Member States, it would have negative implications both for the authority of the judiciary and in the context of the protection of the values which underpinned the creation of the European Community.

After the collapse of communism in Poland in 1989, the system of disciplinary proceedings against the legal professions required fundamental changes of a structural nature. Over the following years, the subject of malfunctioning of the disciplinary judiciary was raised repeatedly in public debate, yet reform attempts proved ineffective. Fundamental changes to the judiciary in Poland were demanded by both the Polish civil society and representatives of all strands of the legal community. It was among the legal practitioners that the need for systemic reforms was voiced, particularly in the area of disciplinary responsibility.

It must be strongly emphasised that every representative of the legal profession is expected to demonstrate elevated standards of conduct, both in professional and private life. Cases of manifest disregard of the legal order by persons whose duty is to safeguard the rule of law must not be ignored. For instance, a judge who has committed an offence of overt theft or a prosecutor who has abused his family for years, or a solicitor and legal counsel driving while intoxicated, should be liable to disciplinary action.

It must be pointed out that, unlike other states that have undergone systemic transformation from the totalitarian regime, Poland has not yet been able to draw legal consequences against representatives of the legal professions who collaborated with the communist repression apparatus and were actively involved in committing judicial crimes. It must not be forgotten that the judiciary and the public prosecution service in the years 1944-1989 were often an active component of the communist apparatus persecuting Polish patriots who resisted the totalitarian regime through involvement in opposition activities.

The continued exercise of public functions by people who have committed such acts not only undermines the social authority of all legal professions, but it also erodes confidence in the administration of justice at large. The previous model of disciplinary action against individuals exercising legal professions did not ensure effectiveness, and consequently those who breached the requirements they were bound to observe often avoided adequate disciplinary responsibility.

The establishment of the Disciplinary Chamber of the Supreme Court by the Supreme Court Act of 8 December 2017 ensured better organisation and improved effectiveness of the processing of disciplinary cases involving the professions of public trust that have an indirect or direct impact on the public perception of the judiciary, which is a common good for all citizens. It is the Disciplinary Chamber, set up as a result of the judiciary reform, that is tasked with protecting the rule of law and the dignity of the professions of public trust. The Disciplinary Chamber of the Supreme Court deals with disciplinary cases involving Supreme Court justices, judges of common and military courts, prosecutors, prosecutors of the Institute of National Remembrance, notaries, bailiffs, solicitors and legal counsel. The purpose of the disciplinary proceedings is to ensure the proper pursuit of the profession, construed as doing so in compliance with the laws and ethics. It should be stressed that, in the context of the disciplinary responsibility framework, Polish legal solutions meet the standards arising from the European legal tradition, and the Polish legislature has drawn on the best practices of the European states in shaping the structure of disciplinary responsibility.

The Disciplinary Chamber of the Supreme Court also considers labour and social security cases relating to the Supreme Court justices as well as and cases concerning the retirement of justices of the Supreme Court. All the above-mentioned categories of cases undoubtedly fall within the remit of the judiciary and serve the exercise of the right of access to court.

Moreover, it should be noted that in a democratic state based on the rule of law the fundamental element of the proper functioning of the judiciary is the independence of judges and autonomy of courts. In the Polish legal order, the authority safeguarding these values is the National Council of the Judiciary (Article 186 (1) of the Constitution of the Republic of Poland) chosen in accordance with the requirements set out in the Constitution of the Republic of Poland and as specified by a statute adopted by the Polish parliament. The Polish legal arrangements for shaping the composition of the National Council of the Judiciary and the way in which that authority designates candidates for the office of judge do not deviate from the regulations prevailing in the different Member States of the European Union. What is more, these arrangements provide the judges' representatives with an overwhelming influence on the choice of candidates for the position of judge, as the 25 members of the National Council of the Judiciary include 17 judges, and the selection procedure itself is much more transparent and open than under the pre-existing regulations in Poland. The meetings of the National Council of the Judiciary are now transmitted online and each candidate has the opportunity to attend the Council's meeting. Finally, the principle of cooptation by the Supreme Court has been abandoned in appointing candidates for Supreme Court justices. Previously, the National Council of the Judiciary could only choose from two candidates with the highest support from the Supreme Court justices currently in office.

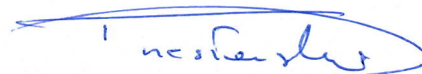
It must be emphasised that the Disciplinary Chamber of the Supreme Court acts on the basis of the Constitution of the Republic of Poland, the Supreme Court Act of 8 December 2017 and other procedural and substantive statutes. It is a permanent court and its jurisdiction is compulsory. The proceedings before the Disciplinary Chamber of the Supreme Court are adversarial in nature and therefore consist in the resolution by the Supreme Court's panel based on the right of dispute between the parties to proceedings with the same legal remedies available to them.

Justices of the Supreme Court are only subject to the Constitution and statutes (Article 178 (1) of the Constitution of the Republic of Poland), and the Disciplinary Chamber of the Supreme Court enjoys all guarantees of independence on the same terms as the other chambers of the Supreme Court. The justices of this Chamber are therefore independent. They fulfil their tasks autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgement of its members and to influence their decisions. Lastly, the justices of the Supreme Court's Disciplinary Chamber enjoy the guarantee of irremovability provided for in Article 180 (1) and (2) of the Constitution of the Republic of Poland. A justice can be recalled from office, suspended from office, transferred to another bench or position against his or her will only by virtue of a court judgement and only in those instances prescribed in statute.

In conclusion, the justices of the Disciplinary Chamber point out that the primary task of the Court of Justice of the European Union is to implement the values and protect the foundations of the European Community, which bind the Member States together. However, this cannot lead to restricting the competence of any Member State to undertake reforms in key areas of its functioning. The actions taken against Poland in recent months are of profound concern for judges, as they lead to undermining the authority of the Polish judiciary, which also translates into the fundamental principle of mutual trust between states. Moreover, the reform of the judiciary in Poland should be looked at in a socio-historical context including the need for profound political transformations post-1989, as well as the abandonment of the communist regime and embarking upon changes towards the model of democracy of the Western European countries. It should be stressed that the implementation of those reforms was demanded by Polish society. The reform of the judiciary in Poland is therefore aimed to bring the Polish legal solutions closer to the European arrangements based on the idea of the rule of law, respect for freedom, the tripartite separation of powers and the principle of mutual trust between states.

Justices of the Disciplinary Chamber are obliged to safeguard the observance of the law and the dignity of the profession, and therefore consider it their duty, as justices of the Disciplinary Chamber of the Supreme Court, to present the true picture of the functioning of the Disciplinary Chamber in which they have the honour to practise.

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Justice Tomasz Przesławski

President of the Supreme Court  
in charge of the Disciplinary Chamber