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## **REPORT ON THE STATE OF RULE OF LAW IN POLAND IN 2021**

This report provides the most important information regarding the rule of law situation in Poland. It describes examples of legal and factual actions, which have taken place in Poland in 2020.

1. There have been no significant legislative changes to the current justice system directly important for the subject of the rule of law.

2. However the significant events and interpretations of law which took place in 2020 were specifically issued to the rule of law, especially:

- 1) Influence of pandemic COVID-19 on access to justice in Poland.
- 2) Actions of the Constitutional Tribunal, in particular its violation of the *nemo iudex in causa sua* principle and the controversial composition of the Tribunal due to judges nominated for the occupied judicial vacancies as well as consequences of the K1/20 ruling concerning the abortion law in Poland for the criminal courts.
- 3) Actions of the Supreme Court attempting to circumvent the prohibition for the judicial operation of the Disciplinary Chamber of the Supreme Court and actions targeted at judges applying the principle of sovereignty and direct application of the Polish Constitution (described in Article 8) through initiating disciplinary proceedings.
- 4) Actions targeted at the independence of lawyers (one example - advocate Roman Giertych's case).

2. 1) The pandemic COVID-19 results in restrictions to many public activities, which are in many cases implemented in government resolutions instead of statutory legislation and without pronouncing the state of emergency in Poland. Pandemic legislations have usually been adopted without proper parliamentary debate in an express path. Restrictions put in government's resolutions are executed by the Police and public administration (e.g. sanitary authority) and violation of these rules are fined with the max PLN 30,000 penalty. This penalty can be enforced immediately, and the person needs to appeal to the court.

During the time of pandemics, access to courts encounters real obstacles and requires possibility of using digital resources (e.g. participating in court videoconferences) or waiting for court meeting in safe conditions. It could delay the ruling for a long time.

Lawyers are expected to provide safe environment to clients and law firm staff. It usually requires remote operation mode, which could negatively affect the quality of professional legal service.

2. 2) The Polish Constitutional Tribunal still faces the controversies concerning the legality of the nomination of its three judges nominated and sworn in for vacancies which were already filled by judges duly elected by Parliament in 2015 (but not sworn in by the President) and issues highly controversial decision from 22 October 2020 in the case *K 1/20* on the constitutionality of the point 2 of subsection 1 of the Article 4a of The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993 in which the abortion law allows for exceptions to the general ban on abortions in cases of a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus's life. The Tribunal decided that the law is unconstitutional and the verdict has caused massive demonstrations all over the country (the verdict has been pronounced on 27 of January 2021<sup>st</sup>). The legal controversies concern i.a. the problem of criminalisation of terminating pregnancies due to embryo pathological reasons by the decision of the Constitutional Tribunal, not by statute, contrary to the principle *nullum crimen sine lege*, arises.

2. 3) Regarding the situation in the Polish Supreme Court, the CJEU and the Polish Supreme Court itself in three rulings found the Disciplinary Chamber not an independent court within the meaning of the EU and national law. In the case C-791/19 *Commission v Poland*, hearing by this Chamber in the disciplinary proceedings of judges has been ordered to be suspended until the final decision of the Tribunal is made. After this temporary ruling the Disciplinary Chamber waived the immunity of judges in criminal proceedings. In the most significant cases of judges both Polish Lawyers Bars announced the supporting position.

2. 4) The example of a highly problematic action from the perspective of safeguarding the rule of law in Poland, against the profession of lawyer, legally protected information and rules of due process was the case in 2020, when the lawyer was detained in the entrance of the court after appearing in court for his client, what could create the so called freezing effect and further actions in this case (intention of searching of the law office without the presence of a representative of the bar council) which could violate the attorney-client privilege. Court decisions in this case are so far in favor of the lawyer.

In summary: Polish lawyers were facing many challenges in the area of the rule of law in 2020.

In 2021 we continue to monitor the situation in this matter and take appropriate actions.