

POLAND – Country Report

53rd Conference of The Bar Presidents – Vienna, February 2025

Justice System

Both Polish Bars continue efforts aimed at separating the function of the Minister of Justice from the function of the Prosecutor General and ensuring the functional independence of the prosecution system from the government. The Ministry of Justice has prepared a draft law which separates the function of the Minister of Justice and the Prosecutor General in order to guarantee, on the assumption, a full independence of the prosecution system from political authorities. The draft regulation includes proposals of institutional mechanisms which have the chance to meet the intended purpose and make the prosecution system independent, apolitical and autonomous.

As part of actions aimed at strengthening the existing principles of fairness in public life, including the enforcement of relevant lobbying principles and a uniform online system for declarations of assets to be filed by public officers and MPs, it is necessary to point out that the law of 25 September 2024 on amendments to the law on lobbying in the legislative process has come into force. The new law supplements the existing lobbying regulations with a new legal institution in legislative procedures, i.e. public consultations on draft laws.

To ensure independent and effective investigation and prosecution, the establishment of the Codification Commission for Criminal Law by Minister of Justice in 2024, which is made of independent experts in the field, deserves a positive response. The Commission establishes real chances for the enforcement of necessary changes aimed at the complete implementation of the recommendation in the near future.

There are also efforts aimed at ensuring effective legal frames for the independent management and editorial independence of public media, the government has declared that comprehensive legislative amendments in this field will be made and new legal rules will be developed. As declared, the new rules will be based on the European Media Freedom Act, which came into force as of 7 May 2024.

Independence

In 2024, the most serious political and government problem related to the independence of the judicial system and independence still consisted in the unsolved constitutional differences in the status of certain people holding judicial office in common courts, administrative courts, the Supreme Court, as well as the Constitutional Tribunal. Such a situation resulted from actions taken by the previous government, which were non-compliant with the EU law, European Convention on Human Rights and constitutional standards. Those actions included,

in particular, the defective establishment of the National Council of the Judiciary, which then resulted in defective judicial nomination procedures. The nomination of three judges for already occupied positions in the Constitutional Tribunal was also questioned and contributed to the defectiveness of judgements made by the Polish constitutional court in 2024. At present, the majority in the Parliament, which took power over in 2023, made an attempt to repair the situation in 2024 by, among others, adopting corrective laws concerning the National Council of the Judiciary and the Constitutional Tribunal, but those laws have not been signed by the incumbent President. The President's objection must be considered as completely unreasonable, because it causes that the situation contrary to constitutional and European standards, including fundamental legal doubts about the status of people nominated for judge's positions by the incorrectly established National Council of the Judiciary, is maintained. In consequence, this questions the stability of court judgements and infringes the subjective right to a fair trial. By analogy, the dysfunctionality of the Constitutional Tribunal also brings about negative consequences, which, in practice, "excludes" this institution from the Polish government system. The Polish National Bars find it absolutely necessary to adapt the National Council of the Judiciary to constitutional standards, which is a condition *sine qua non* for recovering the lawfulness of judicial nomination procedures. It is also necessary to solve the problem of defective court judgements. The full independence of the Constitutional Tribunal must be recovered. In both cases referred hereinabove, it is necessary to implement relevant judgements of the European tribunals, i.e. CJEU and ECHR.

Irremovability of judges court presidents and prosecutors

As a result of the aforementioned institutional shortcomings in the existing National Council of the Judiciary and, in consequence, the defective judicial nomination procedures, in 2024 at Polish courts there were over 3,000 people at judge's positions whose status did not comply with the constitutional and European standards. Some of those persons were also nominated as presidents of courts or vice-presidents of courts' divisions. The present Minister of Justice, took corrective actions in the latter field, which should be viewed in a positive light. The first group of those corrective actions has not been, however, completed because of the President's objection. In effect, it is extremely difficult to resolve this unfavourable institutional problem.

In November 2024, there ended the term of three judges of the Constitutional Tribunal who, based on the President's illegitimate refusal to receive their oath in 2015, did not take, however, their judicial functions. In December 2024, there ended the period in which people who were nominated in 2015 for already occupied positions of judges of the Constitutional Tribunal and acted as judges of the Constitutional Tribunal. The present Parliament has not nominated new judges of the Constitutional Tribunal. At present the Polish constitutional court is made of 12 members, which is against the constitutional standards, which provide for 15 members. In addition, some of members of the Constitutional Tribunal occupy the positions of judges of the Constitutional Tribunal based on the non-constitutional nomination. Despite of these irregularities, in December 2024 the President appointed a new president of the Constitutional Tribunal.

In 2024, the State Prosecutor was changed, which is unjustly questioned mainly by the present parliamentary opposition, which, while ruling in the years 2015-2023, caused institutional problems in the structure of the prosecution system. During that period, there were many incidents of an extremely politicised control of the operation of prosecutors, which, in fact,

contributed to the loss of their independence and political neutrality. It is necessary to repair the situation in a systematic way and review, in detail, the prosecution system model, including its full independence from political authorities.

Promotion of judges and prosecutors (incl. judicial review)

As a result of the systemic problem concerning the National Council of the Judiciary, the judge promotion procedures were still constitutionally defective in 2024. In consequence, similarly to people that were nominated for judges for the first time, people that were promoted to the judge's position at courts of higher instances also took part in the defective procedure. This generates a fundamental problem concerning the legality of rulings made by those people, including, in particular, negative legal consequences of rulings made by people defectively nominated or promoted to the Supreme Court, which applies to the whole Chamber of Supreme Control and Public Affairs, as well as other chambers of the Supreme Court, including the Chamber of Professional Liability. Such a negative system also causes that the position of the First President of the Supreme Court is occupied by a person appointed as a Supreme Court judge in the procedure contrary to the European and constitutional standards. In 2024, no necessary corrective actions were taken in that area.

Allocation of cases in courts

The Regulation of the Minister of Justice of 6 February 2024 amended the Rules for the operation of the common courts by adding an article that stipulates that cases concerning requests for excluding a judge, which are based, among others, on the judge's nomination circumstances, are not allocated to judges who took their position as a result of a judge nomination request presented to the President of the Republic of Poland and the National Council of the Judiciary established under Art. 9a of the Law of 12 May 2011 on the National Council of the Judiciary, and those judges are not taken into account for the purpose of such cases in the existing random allocation of court cases.

This amendment is a positive change as it is a necessary element of counteracting the crisis of judicial authorities in Poland. The change does not constitute a complete remedy for the crisis in the judiciary, but, given the existing political circumstances and related legal capacities, it should be appreciated.

Independence and powers of the body tasked with safeguarding the independence of the judiciary

The existing National Council of the Judiciary, which still operated in 2024, was established on the basis of the aforementioned law of 2017, which violates, however, the standards of the Polish constitutional standards, in particular by authorising the Parliament, and not representatives of the judicial environment, to nominate judges being members of the National Council of the Judiciary. As a result of that the impartial character of the judge nominations procedures is questioned. The corrective actions taken in 2024 in that area by the present authorities were, however, completely illegitimately, as indicated above, blocked by the incumbent President.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules

The problem related to the disciplinary liability of judges and prosecutors, which existed in Poland in 2024, covers changes made in that area by the previous authorities. There were still incidents where disciplinary prosecutors of common court judges, who were dependent on the previous Minister of Justice, made disciplinary charges. In the past, those disciplinary prosecutors conducted proceedings mainly against judges who objected to the changes made in the judiciary system by the previous government.

The present Minister of Justice, notices the problem. However, given the risk that amendments to relevant laws will not be signed by the incumbent President, he points out that it is necessary to refrain from dismissing the disciplinary prosecutors till the end of their term because the existing law does not set forth any legal opportunity for the dismissal. The Minister of Justice has nominated, however, *ad hoc* disciplinary prosecutors, who may not institute a disciplinary procedure against a judge on their own, but may investigate whether there are premises for instituting disciplinary procedures or take the judge's disciplinary case.

Independence/autonomy of the prosecution service

Apart from the aforementioned government draft regulation concerning the separation of functions of the Prosecutor General and the Minister of Justice, the drafts of other amendments to the law on the prosecution system are also being prepared by the Codification Commission for Judicial and Prosecution Systems, which operated in 2024. The amendments are, in particular, to contribute to the reform of the structure of the prosecution system, including the liquidation of regional prosecutor's offices and the implementation of a uniform prosecutor's status, as well as to strengthening the independence of the prosecutor's status, developing a professional promotion model, and reducing financial disproportions among prosecutors. The draft law is to be ready in the middle of 2025.

Independence of the Bar (chamber/association of lawyers) and of lawyers

The real chance that the confidentiality of communication between a lawyer or other legal professions and a client may be violated if a lawyer applies for the judge's position forms a special confidentiality problem which was not fully solved in 2024. In that case, the lawyer is obliged, among others, to present, as part of competition documentation, examples of files of cases they handled and legal opinions they prepared, which include information that is subject to the confidentiality rules, and, what is important, the files and opinions are not anonymized. The Polish Ombudsman mentioned that issue in his correspondence to the present Minister of Justice and rightly pointed out that, in consequence, an attorney-at-law is forced to submit, without special legal basis, the information to court presidents, judge inspectors and members of the National Council of the Judiciary, which is an unproportional interference in the right to privacy. In September 2024, the Ministry of Justice decided to initiate legislative work to enable lawyers and attorneys-at-law to submit anonymized copies of their legal opinions. In the opinion of the Minister of Justice, the problem does not refer, however, to the absence of anonymization in court files, but both Polish Bars do not agree with that and fully support the Ombudsman's position.

Examples of physical, online or legal threats or harassment of lawyers while exercising their professional duties

Results of the survey of December 2023, which was held by the Council of Bars and Law Societies of Europe (CCBE), whose purpose was to examine threats and aggression against lawyers indicated, that 92.8 % of lawyers have never encountered physical violence, and 5.3% of lawyers have experienced it once. However, over a half of lawyers encountered verbal aggression, mainly by clients (around 47%) and an opposite party in the trial (around 33%) and the present clients (11.4%). Given the above data, Polish Bars intend to take additional actions to support individual lawyers and counteract such phenomena in general.

Legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The main institutional problem that also influences the stability of the profession of lawyers in Poland involves the circumstances related to the establishment of most of Polish judicial authorities contrary to the European and constitutional standards of the judicial independence. The authorities and agenda of both Polish National Bars have taken permanent comprehensive actions in favour of the independence of the profession, the inviolability of the confidentiality rules, as well as the respect for the autonomy of the National Bars in developing the principles for the profession and professional ethics of lawyers. In the opinion of the National Bars, it seems necessary to increase, in general, the involvement of representatives of the National Bars and establish new forms of participation at all stages of the development of normative acts in Poland, in particular the acts concerning the administration of justice and the protection of citizens' rights.

Problems and challenges in Poland

a) Efficiency of the justice system

Given the data presented on 1 October 2024 by the Supreme Audit Chamber Office, an average duration of proceedings for selected categories of validly concluded cases at the first instance courts increased in general in the years 2013-2023 by around two months: from 4.1 month in 2013 to 5.9 months in 2023 (growth by 44%). In particular, the situation related to the cases which were important from the point of view of the protection of citizens' rights and were heard before the first instance (district) courts was even worse: an average duration of civil proceedings increased from 9.2 to 16.5 months (i.e. by 79%) and commercial proceedings from 11 to 17.7 months (i.e. by 61%). The duration of court proceedings was not significantly extended solely in criminal cases.

In November 2024, Minister of Justice presented “*10 pillars*” of the Ministry's programme entitled “Efficient courts”, which is to constitute a remedy for the above situation. The programme provides for:

- (1) court digitalisation, which will gradually include regular paper files scanning, as well as access to digital documents;
- (2) one judge assistant per two judges;
- (3) inspecting judges being able to take on adjudication responsibilities;

- (4) widening opportunities for filing complaints about court delays in the case of, among others, proceedings concerning a conditional early release from imprisonment, disciplinary cases of judges and prosecutors, lifting of the immunity of a judge or a prosecutor;
- (5) improving the quality of mediation by professionalising court mediators and implementing a national register of court mediators;, as well as implementing obligatory mediation in certain categories of cases;
- (6) implementing the digitalisation of court experts and a central register of court experts;
- (7) addressing backlogs in proceedings in Swiss franc cases by supporting the judges with new assistant FTEs, as well as enforcing regulations based on which evidence requirements could be reduced and opportunities for settlements in those cases could be expanded;
- (8) expanding the functionality of the court information portal by enabling a function for the submission of pleadings in civil and criminal proceedings via that portal;
- (9) holding management training for presidents of courts to strengthen effective work organisation at courts;
- (10) enforcing regulations on family law which will accelerate proceeding concerning, among others,

(i) supervision over the performance of obligations and the exercise of rights resulting from parental responsibility,

(ii) taking a child away or giving a child to an authorised person,

(iii) the participation of a court-appointed guardian in contacts with a child,

(iv) custody, and

(v) supervision over care, guardianship and representation.

The programme is (hopefully) to be implemented in the years 2025-2026.

b) Professional secrecy

Both National Bar Councils have noticed increasing number of motions to lift the professional secrecy in respect to lawyers, being clients representatives and defenders as well. In each case local Bar Chambers, supported by the Country Bars if needed, initiate actions aiming to support the lawyer and enter the proceeding in *Amicus Curiae* method.

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Warsaw, February 2025