

LEGAL DISPUTES OVER THE JUDICIARY: AN ELEMENT OF THE POLISH CONSTITUTIONAL CRISIS

UDC 347.991:342.4(438)

342.565.2(438)

342.4:323.2(438)

Krzysztof Skotnicki, Aldona Domańska, Jakub Stępień

Faculty of Law and Administration, University of Lodz, Poland

Abstract. *This article is an attempt to outline and explain the essence of disputes on the legal solutions adopted in the field of the functioning of the judiciary in Poland after 2015, which have been subject to critical assessment by international bodies and representatives of Polish jurisprudence. The constitutional crisis in Poland concerns the functioning of the Constitutional Court, the Supreme Court, common and administrative courts, and the National Council of the Judiciary. The last one is not an organ of the judiciary but its constitutional powers concern the judiciary, and the changes which have been made in the method of appointing its members constitute one of the essential elements of the constitutional crisis in Poland. Therefore, to show the complexity of the problem more fully, the article will discuss legislative activities, the content of amendments to legal acts, and the consequences brought about by introducing defective regulations into the legal order of the Third Republic of Poland, both at the national and international level.*

Key words: *Constitution, judge, independence, National Council of the Judiciary, Republic of Poland*

1. INTRODUCTION

After the parliamentary elections in 2015, Poland encountered a constantly deepening constitutional crisis, one of the consequences of which is that Poland became one of countries that have not yet received financial resources from the Reconstruction Fund of the EU. The reason for this state of affairs is the critical assessment of the European Union (EU) with regard to the state of the rule of law in Poland, including the situation in the judiciary in particular. This is reflected not only in political assessments but also in the judgments of the Court of Justice of the EU (hereinafter: the CJEU), the consequence of

Received September 6th, 2023 / Revised October 9th, 2023 / Accepted October 30th, 2023

Corresponding author: Aldona Domańska, Ph.D., Associate Professor, Department of Constitutional Law, Faculty of Law and Administration, University of Lodz, Poland; e-mail: aldona.domanska@wpia.uni.lodz.pl

which are high financial penalties imposed on Poland. Similar conclusions regarding the state of the rule of law in Poland may also be found in the judgments of the European Court of Human Rights (hereinafter: ECtHR).

In the following study, we present the changes in the area of the judiciary in Poland after 2015 and explain the essence of disputes regarding the adopted regulations that are subject to critical assessment. The paper will focus on the key issues of the aforementioned legal disputes in Poland on the functioning of the Constitutional Court, the Supreme Court, common and administrative courts, and the National Council of the Judiciary. Although the last one is not an organ of the judiciary, its constitutional powers concern the judiciary and the changes that have been made in the method of appointing its members constitute one of the essential elements of the constitutional crisis in Poland.

Although the study touches on the activities of some of the institutions of the European Union, it should be noted that the analysis does not cover the relations between Polish law and EU law. Yet, in this context, it is worth emphasizing that, in accordance with Article 8, Article 87 and Article 91 of the Constitution of the Republic of Poland,¹ ratified international treaties must be consistent with the Constitution; the acts of the Parliament must also be consistent with the Polish Constitution and the adopted/ratified international treaties.

2. DISPUTES OVER THE ELECTION OF THREE JUDGES OF THE CONSTITUTIONAL COURT

The controversy over the constitutionality of the composition of the Constitutional Court has been present since 2015. In the year that sparked the controversy, the elections for the President took place in May 2015, the parliamentary elections for representatives in the Sejm and the Senate were to take place in October 2015, and the term of office of five judges of the Constitutional Tribunal was coming to an end (for 3 of them on 6 November, for one of them on 2 December, and for one of them on 8 December 2015). It should be recalled that the Constitutional Tribunal, pursuant to Article 194 § 1 of the Constitution, shall be composed of 15 judges individually elected by the Sejm for a 9-year term of office; they replace of judges who end their term of office (Article 194 § 1 of the Constitution).

In the spring of 2015, when the process of preparing of the new Act on the Constitutional Tribunal was underway, the date of the parliamentary elections and thus the beginning of the new term of the Sejm was unknown. This situation created a risk that the term of office of 5 judges might expire but new judges would not be appointed to replace them. Therefore, the Constitutional Court Act of 25 June 2015 (hereinafter: the CC Act)² envisaged that the election of all 5 judges shall be made by the Sejm at the end of the Sejm term of office. Thus, on 8 October 2015, five new judges of the Constitutional Court were elected during the last session of the Sejm. Andrzej Duda, the new President of the Republic of Poland, who has been in office since July 2015, never took an oath from any of the newly appointed judges (as envisaged in Article 21 of the CC Act).

Parliamentary elections were held on 25 October 2015 and, as expected, the opposition party took power. The first Sejm session in the new term of office took place on 10 November 2015, i.e. after the end of the term of office of three judges of the Constitutional Tribunal, but also

¹ The Constitution of the Republic of Poland of 2nd April 1997, *Dziennik Ustaw*, No. 78, item 483. <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

² The Constitutional Court Act, *Dziennik Ustaw*, of 25 June 2015, item 1064; [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)009-e)

before the end of the term of office of two more judges in December 2015. The Act amending the Constitutional Court Act (hereinafter: the CCA Act)³ was passed on 19 November 2015. Article 137a of this Act stipulated that in the case of all judges of the Court whose term expires in 2015, new judges will be elected by the Sejm in the current term of office. In turn, on 25 November 2015, the Sejm adopted 5 separate resolutions declaring "*the lack of legal force*" of the resolutions issued on 8 October 2015 on the election of 5 judges of the Constitutional Court. It should be emphasized that this was highly peculiar because, under the Polish law, Sejm does not have the power to adopt resolutions on the lack of force of resolutions issued by the Sejm. On 2 December 2015, the Sejm elected 5 new judges of the Constitutional Court; in the night of 2 December 2015, four new judges took the oath in front of the President of Poland (one judge could not take the oath because the term of office of the former Constitutional Court judge, whom the new judge was to replace, had not expired yet).

The newly appointed judges reported to work in the morning on 3 December 2015, but they were not allowed to work by the President of the Constitutional Court due to legal doubts regarding the constitutionality of their election under the Polish Constitution. The President of Constitutional Court made this decision because the Constitutional Court hearing on the constitutionality of the Constitutional Court Act of 25 June 2015 was scheduled for the same date. In its judgment in Case no. K 34/15 of 3. December 2015,⁴ the Constitutional Court found that the regulation allowing the Sejm of the 7th term of office to appoint three judges in place of those whose terms of office ended in November 2015 was constitutional, while the regulation allowing the Sejm to elect two judges whose term of office ended in November 2015 and December 2015 was unconstitutional (CC Case no. K 34/15). On 9 December 2015, the Constitutional Court issued a judgment⁵ in the matter of the Act amending the Constitutional Court Act of 19 November 2015, in which the Court found the provisions on the new election of Constitutional Court judges unconstitutional. Despite the judgments, President of Poland did not take the oath from the three judges elected on 8 October 2015, arguing that all seats in the Constitutional Court were filled. Since then, some representatives of the legal doctrine and journalists have used the term "stand-in judges" (or "doubles") when referring to the three judges who were elected by the 8th Sejm on 2 December 2015. The dispute continued even after the death of two of these people and appointing others in their place (Skotnicki, 2020: 105–114). Ever since, the Court has already issued, over 300 judgments on the participation of "stand-in judges" ("doubles").

In the following years, further amendments to the Act amending the Constitutional Court Act were adopted, as well as new legislative acts regulating the organization and functioning of the Constitutional Court (seven in total since 2015). Currently, these are: the Act of 30 November 2016 on the status of judges of the Constitutional Court,⁶ and the Act of 30 November 2016 on the organization and procedure before the Constitutional Court.⁷ Yet, the adoption of these acts did not end the disputes over the composition of the Court; on the contrary, there are allegations that the Court has been politicized, as it includes, *inter alia*, one of the most active deputies of the ruling party. The judicial activity of the

³ Act amending the Constitutional Court Act, *Dziennik Ustaw*, of 19 November 2015, item 1928;

⁴ Judgment of the Constitutional Court of Poland in Case no. K 34/15.

⁵ Constitutional Court Case no. K 35/15 of 9 December 2015.

⁶ Announcement of the Marshal of the Sejm of the Republic of Poland on the publication of the consolidated text of the Act on the status of judges of the Constitutional Tribunal, *Dziennik Ustaw*, 2018 item 1422.

⁷ Announcement of the Marshal of the Sejm of the Republic of Poland on the publication of the consolidated text of the Act on the organization and procedure before the Constitutional Tribunal, *D. Ustaw*, z 2019 item 2393.

Constitutional Court is also criticized, not only because of the controversial content of many judgments (particularly those regarding EU law and the right to abortion) but, above all, because of a significant reduction in the number of judgments issued. At the same time, a very negative phenomenon of the increased number of applications submitted by the Government or the deputies of the ruling majority has been observed, which leads to issuing Court judgments which legitimize the changes in the law made in recent years (Wolny, Szuleka, 2021: 64). The situation is further complicated by doubts concerning the appointment of the President of the Constitutional Court in December 2016, including reservations as to the proper procedure for convening the General Assembly of the Constitutional Court judges, the participation of the so-called "stand-in judges" and, above all, the failure of the General Assembly to adopt the required resolution on presenting candidates for the President of the Constitutional Court to the President of Poland.

3. CHANGES IN THE METHOD OF APPOINTING AND DISMISSING PRESIDENTS AND VICE-PRESIDENTS OF COMMON COURTS

Until 2017, the judicial self-governance played an extremely important role in the procedure of appointing and removing presidents and vice-presidents of common (ordinary) courts. Under the Act on the Organisation of Ordinary Courts of 27 July 2001 (OOC Act),⁸ the appointment and dismissal of presidents and vice-presidents of the courts of appeal and district courts were made by the Minister of Justice, but only after consulting the general assembly of appeal judges; if the opinion was negative, the Minister had to request the opinion of the National Council of the Judiciary (NCJ); if the NCJ also issued a negative opinion, it was binding on the Minister. Presidents and vice-presidents of district courts were appointed and dismissed by the President of the court of appeal, after consulting the general assembly of district court judges. Presidents of the courts of appeal and regional courts were appointed for a 6-year term, and presidents of district courts served for a 4-year term of office (Article 27 of OOC Act).

On 12 July 2017, despite numerous negative opinions of the legal doctrine, the judiciary community, and protests of a significant part of the general public, the Act amending the Act on the Organisation of Ordinary Courts and certain other acts (2017)⁹ was adopted. It countermanded the previous procedure of appointing and dismissing presidents and vice-presidents of common courts. From then on, it has become the exclusive competence of the Minister of Justice, who does not have to consult either the judicial self-government bodies (general assemblies of appeal and district court judges) nor the National Council of the Judiciary. In addition, it was established that the Minister of Justice may dismiss any of the incumbent presidents and vice-presidents of courts within a period of no more than 6 months from the date of entry into force of the amending Act (12 August 2017). As a result of this regulation, at least 130 court presidents and vice-presidents have been dismissed.

Therefore, this solution deprives judges of any influence on filling these judicial positions. Currently, it is a purely political decision, which does not contribute to the independence of the judiciary and the independence of judges. In a democratic state governed by rule of law, where

⁸ Act on the Organisation of Ordinary Courts of 27 July 2001 (amended in 2011, 2017, 2019), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)004-e)

⁹ Act amending the Act on the Organisation of Ordinary Courts and certain other acts, *Dziennik Ustaw*, 2017, item 1452, which entered into force on 12 August 2017. See: CoE Opinion no. 904/2017, Strasbourg, 20 November 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)046-e)

the system of state bodies is based on the principle of the separation and balance of powers between the three branches of government, it absolutely does not correspond to these principles expressly guaranteed in Article 10 of the Polish Constitution. The relations between the judiciary and the other two branches of government are different from those between the legislative and executive powers, where their competences are correlated and even intersect. Art. 173 of the Constitution explicitly stipulates that courts and tribunals shall constitute a separate power, which shall be independent from other branches of government. However, this separate organizational and functional power of the judiciary does not imply complete separation of powers (Łętowska, Łętowski, 1996; Trzeciński, 1999). Therefore, it is possible for the executive authority to encroach upon the extrajudicial powers of the courts. This is manifested in the competence of the Minister of Justice to exercise administrative supervision over courts, an element of which is the appointment and dismissal of presidents and vice-presidents of ordinary courts. However, the jurisprudence of the Constitutional Court has repeatedly indicated that this cannot be the exclusive right of the Minister of Justice, but that the judicial self-government bodies should also significantly participate in the process.¹⁰ These judgments, especially in Case no.K 45/07 issued on 15 January 2009, are recognized by the doctrine as the most important judgments of the Constitutional Court of Poland (Wiliński, 2016: 745).

4. THE NATIONAL COUNCIL OF THE JUDICIARY

In order to present disputes over the judiciary and violations of the rule of law in Poland, due consideration shall be given to the institution of the National Council of the Judiciary (NCJ). Poland was the first country in Central and Eastern Europe to establish such a body (Godlewski, 2019: 198), at the beginning of the political transformation in 1989. From the very outset, it has been a constitutional body whose task is to safeguard the independence of courts and judges (Article 186 of the Constitution); its main competence is to present the judicial candidates for the Supreme Court, the Supreme Administrative Court, common courts, administrative courts and military courts to the President of Poland for approval.

Article 187 § 1 of the Constitution (1997) prescribes the composition of this body, which is composed of three distinctive groups of members. The first group comprises the *ex officio* members: the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court, and a person appointed by the President (Art. 187 § 1, point 1). The second group comprises 15 judges selected from among judges of the Supreme Court, common courts, administrative courts, and military courts (Art. 187 § 1, point 2). The third group comprises 4 members elected by the Sejm from among the deputies and 2 members elected by the Senate from among the senators (Art. 187 § 1, point 3). Article 187 § 1, point 2 and the method of selecting judges to the National Council of the Judiciary are of particular importance for the rule of law disputes pending in Poland. Under the current Constitution, the manner of electing 15 judges was first regulated by the Act of 27 July 2001 on the National Council of the Judiciary¹¹ and then by the Act of 12 May 2011 on the National Council of the Judiciary¹². Similarly to the former acts regulating the functioning of this body, these legislative acts stated that judges were appointed by general assemblies of judges of courts of various instances. Thus, Art. 187 § 2 of the Constitution was also interpreted by the Constitutional Court

¹⁰ See: Judgments of the Constitutional Court in Case no. K 11/93, Case no.K 12/03, Case no.K 45/07.

¹¹ Act on the National Council of the Judiciary, *Dziennik Ustaw*, 2001, nr 100, item 1082.

¹² Act on the National Council of the Judiciary, *Dziennik Ustaw*, 2011, nr 126, item 714.

as establishing "the principle of the election of judges by judges" (Case no. K 25/07).¹³ This notion was shared by the vast majority of representatives of the doctrine (Garlicki, 2005; Banaszak, 2012).

In 2017, however, the ruling political camp decided to depart from this well-established solution and to introduce the election of judges to the National Council of the Judiciary (NCJ) by the Sejm. In the opinion of the ruling majority, based solely on a linguistic interpretation, Article 187 § 1 (point 2) of the Constitution is not prejudicial to who is to elect judges to the NCJ and leaves the decision on this matter to the legislator. Occasionally, this interpretation is also expressed in the doctrine, which additionally emphasizes that, if the Constitution entrusts the decision to a specific body, it clearly indicates that it is done in light of the principle of legality (Article 7 of the Constitution); hence, the competence of judges to elect judges to the NCJ cannot be presumed (Kaczmarczyk-Kłak, 2017: 438-439). Supporters of this position also refer to the decision of the Supreme Court of 15 March 2011,¹⁴ which states that the Constitution does not stipulate that judges to the National Council of the Judiciary must be elected only by judges (Case no. III KRS 1/11). However, the most important element of the justification for this position is the Constitutional Court judgment of 20 June 2017¹⁵, concerning the participation of the persons whose membership in the NCJ composition was contested. In its judgment, the Court stated: "The Constitutional Tribunal in the current composition does not agree with the position taken in the judgment in Case No. K 25/07 that the Constitution stipulates that judges elected by judges may be members of the NCJ. Article 187 § 1 (point 2) of the Constitution only stipulates that these individuals are elected from among judges. However, the constitution-maker did not indicate who may appoint these judges. Thus, the Constitution stipulates who may be elected a member of the National Council of the Judiciary, but it does not specify how to elect judges to membership of the National Council of the Judiciary. These issues were to be regulated in the act of parliament" (Case no. K 5/17).¹⁶ This position is binding for the current government, as it allows the Sejm to consider the manner in which the Sejm appoints judges to the and assess the compliance of this procedure with the Constitution.

The original amendment to the NCJ Act, adopted on the initiative of the Council of Ministers, was vetoed by the President Andrzej Duda, who immediately submitted his own draft amendment which, however, did not change much in the new method of selecting judges to the National Council of the Judiciary. The Act amending the NCJ Act was passed on 8 December 2017.¹⁷ Currently, under Article 11a (2) of the amended NCJ Act, candidates to the National Council of the Judiciary are proposed by 2,000 citizens over the age of 18 who have full legal capacity and full political rights, or by 25 judges (excluding retired judges). From among the candidates proposed in this way, each parliamentary club selects no more than 9 candidates (Article 11d (2) of the NCJ Act), and then the competent Sejm committee selects from among them a fifteen-person list of candidates for members of the National Council of the Judiciary, whereby the list must include at least one candidate from each parliamentary club (Art. 11d (4) of the NCJ Act). The election is made by voting for the entire list; in the first vote, a majority of 3/5 votes is required, in the

¹³Judgment of the Constitutional Court in Case no. K 25/07.

¹⁴Judgment of the Constitutional Court in Case no. III KRS 1/11, OSNP 2012, no. 9–10, pos. 131.

¹⁵Judgment of the Constitutional Court in Case no. K 5/17; OTK-A 2017, pos. 48.

¹⁶Judgment of the Constitutional Court in Case no. K 5/17; OTK-A 2017, pos. 48.

¹⁷ Act amending the Act on the National Council of the Judiciary and certain other acts of 8 December 2017., *Dziennik Ustaw*, 2018, item 3 (entered into force on 17 January 2018).

presence of at least half of the statutory number of deputies (Article 11 (5) of the NCJ Act); if such a majority is not achieved, a second vote is held, where an absolute majority of votes is sufficient for election, in the presence of at least half of the statutory number of deputies (Article 11d (6) of the NCJ Act). It means that the judges are now elected to the NCJ by politicians; thus, as long as the ruling political camp has the support of more than half of the Sejm, they will always vote for their list of candidates for membership in the National Council of the Judiciary.

This solution has been strongly criticized by the opposition and legal scholars. The situation in which the Sejm makes a decision on filling 19 out of 25 seats in the National Council of the Judiciary is deemed to be unacceptable, especially considering that the Minister of Justice is also an NCJ member. The opponents stress that this method of appointing judges is contrary to the principles of the separation of powers and independence of the judiciary and judges; not only does it deprive the judiciary of its autonomy but also fails to protect the judiciary against interference of the legislative and executive authorities; thus, it allows the political parties to indirectly control the judicial nomination process. As the Constitution clearly regulates how many members to the NCJ are elected by the Sejm, this is a violation of the constitutional proportion of representatives of individual authorities in the National Council of the Judiciary (Piotrowski, 2017: 14-15, Garlicki, 2018: 390; Szmyt, 2019: 125; Rakowska-Trela, 2019: 112-113; Skotnicki, 2020: 47-59).

The allegation that the current composition of the National Council of the Judiciary is unconstitutional (and, thus, commonly designated as the neo-NCJ) generates frequent disputes on the judicial nomination procedure, which is an important issue for further considerations in this study. Moreover, the termination of the 4-year term of office of the existing members of the National Council of the Judiciary under the amended NCJ Act of 8 December 2017 was considered unconstitutional as well. Ultimately, in the ECtHR judgments of 15 March 2022 and 16 June 2022 concerning the applications lodged by judges Jan Grzęda and Leszek Żurek¹⁸, whose terms of office at the NCJ were shortened under the amended NCJ Act, the European Court of Human Rights held that there was a violation of Article 6 § 1 of the European Convention on Human Rights (the right of access to a fair trial) due to the lack of judicial review of premature termination of their terms of office.

5. THE DISCIPLINARY CHAMBER OF THE SUPREME COURT (2017) AND THE PROFESSIONAL LIABILITY CHAMBER OF THE SUPREME COURT (2022)

On 8 December 2017, another act relating to the judiciary was adopted on the initiative of the President, the new Supreme Court Act (SC Act).¹⁹ In the context of presenting the problem of disputes over the rule of law in Poland, it is important to outline the key changes that this Act has introduced in the organizational structure of the Supreme Court of Poland. In addition to the existing chambers (the Civil Law Chamber, the Criminal Law Chamber, and the Chamber of Labor Law and Social Security), Article 3 of the SC Act (2017) introduced two new chambers: the Disciplinary Chamber, and the Chamber of Extraordinary Review and

¹⁸ ECtHR Cases: *Grzęda v. Poland* (Appl. no.43572/18), Grand Chamber judgment of 15 March 2022; *Żurek v. Poland* (Appl. no. 39650/18), Grand Chamber judgment of 16 June 2022 .

¹⁹ Act of 8 December 2017 on the Supreme Court (hereinafter: the Supreme Court Act), *D.Ustaw*, 2018, item 5.

Public Affairs (Domańska, 2020: 103-116).²⁰ Although the dispute did not concern the structure of the Supreme Court, as it is often presented by the ruling political camp, the issue of the legal status of the Disciplinary Chamber and the method of appointing judges to its composition was raised.

Under the 2017 Supreme Court Act, the main task of the Disciplinary Chamber was to adjudicate cases related to disciplinary misconduct and liability of judges, prosecutors and representatives of other legal professions (Article 27 of the SC Act 2017). The problem was that this Chamber was given a special status; hence, despite formally remaining in the structure of the Supreme Court, the Disciplinary Chamber became a far more separate entity than it was necessary (Radajewski, 2019: 23). Under the SC Act, the Supreme Court is headed by the First President of the Supreme Court (Article 14 § 1 SC Act), and individual chambers are headed by the presidents of the Chambers (Article 15 § 1 SC Act). The First President has a leading function; he manages the work of this body, represents the Supreme Court before the Constitutional Court, in the Sejm and in the Senate committees, reports to the President of the Republic on identified irregularities, *inter alia*, issues opinion and presents them to the President of the Republic on the candidates for the position of the President of the Supreme Court, and judges of the Disciplinary Chamber (Article 14 § 1, points 2) and 3) SC Act). The new SC Act (2017) also stipulates that the President of the Disciplinary/Professional Liability Chamber is largely autonomous; he was obliged to submit independent annual reports on the activities of this Chamber to the Sejm, the Senate, the President of the Republic, and the National Council of the Judiciary, along with comments on identified loopholes or irregularities that have to be removed in order to ensure the rule of law, social justice and the cohesion of the legal system of the Republic of Poland (Article 6 § 2 SC Act); the presidents of other chambers do not have this competence. Unlike the presidents of other chambers, he also had an exclusive competence to decide on the jurisdiction of the Disciplinary Chamber²¹, which could not be modified by the First President of the Supreme Court or any composition of the Supreme Court (Article 28 § 2 SC Act).

The obligation of the First President of the Supreme Court to represent the Supreme Court in proceedings before the Constitutional Court, in the work of parliamentary and senate committees in consultation with the President of the Disciplinary Chamber (Article 14 § 1 SC Act) was also absolutely surprising. The Disciplinary Chamber had its own separate budget, the draft of which was adopted by the assembly of judges of this Chamber, and which was included without any changes in the draft budget prepared by the First President for the Supreme Court (Article 7 § 4-6 SC Act). The President of the Disciplinary Chamber also had an independent chamber office and press spokesperson, whose appointment and activities were beyond the control of the First President of the Supreme Court.²² Thus, the judges who were to sit in this Chamber were the judges appointed after the establishment of the Disciplinary Chamber (by decision of the President of the Republic at the request of the new NCJ), and they would receive remuneration 40% higher than other

²⁰ See: The Supreme Court of the Republic of Poland (2023): Organization; <https://www.sn.pl/en/about/SitePages/OrganizationIOZ.aspx> (accessed 22.10.2023).

²¹ Article 28 (2). Act of 8 December 2017 on the Supreme Court, Dz. U from 2018, item 5.

²² § 1 p.2. Regulation of the President of the Republic of Poland of February 11, 2019 amending the regulation - Rules of Procedure of the Supreme Court, Dz. U of 2019 pos. 274.

judges of the Supreme Court (Article 48 § 1 - 2 SC Act).²³ The procedure before the Chamber was also specific, and the adjudicating panels were to be composed of lay judges (benchers) appointed by the Senate, i.e. by politicians (Article 62 § 2 SC Act).

Finally, it should be noted that the institution of the Extraordinary Disciplinary Prosecutor of the Supreme Court was established to conduct investigative actions on a specific case concerning a judge of the Supreme Court and present evidence on disciplinary offences which meet the criteria of a deliberate fiscal crime or a deliberate indictable crime prosecuted by public indictment. The Extraordinary Disciplinary Prosecutor is appointed by the President of the Republic of Poland from the ranks of judges or prosecutors; if the President does not do that within the specified time limits, it can be done by the Minister of Justice (Article 76 § 8 SC Act).

In view of all these provisions, the literature on this subject matter even includes the opinion that the Disciplinary Chamber is an unconstitutional solution, as it has all the features of an extraordinary court within the meaning of Art. 175 § 2 of the Constitution,²⁴ or is a judicial body which is not provided for in Article 175 § 1 of the Constitution²⁵; thus, "the conferral of powers over the judiciary in disciplinary and other matters relating to the status of Supreme Court judges is a clear breach of the Constitution" (Wróbel, 2019: 29).

The introduced legal solutions have been severely criticized. The representatives of the doctrine and judges spoke out very strongly against the adopted amendments (Machnikowska 2018; Bojarski, Grajewski, Kramer, Ott, Żurek, 2019). We may also refer to the Opinion of the European Commission for Democracy through Law (the so-called Venice Commission), published on 11 December 2017.²⁶ Referring to the Polish reforms of the judiciary, the Venice Commission pointed that the amended legislative acts, including the new Supreme Court Act, "pose a serious threat to the independence of the Polish judiciary" and „seriously undermine the separation of powers and the rule of law in Poland" (Venice Commission, 2017: 4; § 9). The Commission considered that the two new chambers were given a special status and powers that exceed those of other chambers, that they are mainly composed of newly appointed judges (appointed by the President of the Republic at the request of the new National Council of the Judiciary, which is dominated by the current political majority), and that adjudication of judges exclusively appointed by the President of the Republic may be dangerous both for disciplinary proceedings and for extraordinary review proceedings (e.g. on politically sensitive sensitive issues involving election disputes or validation of election results), as well as for democracy at large (Venice Commission, 2017: 10; § 37-38, § 43) The Commission also criticized the involvement and selection of lay judges (benchers who are directly appointed by the Senate along the political lines), and particularly their participation in the disciplinary and extraordinary proceedings at the SC level, which is dangerous for the efficiency and quality of justice (Venice Commission, 2017: 15, 19; § 66-70, § 91). In turn, on 20 December 2017, for the first time in

²³ Art. 48. § 1 of the SC Act. "The base remuneration of a Supreme Court judge shall be 4.13 times the base figure used to determine such remuneration."

²⁴ Art. 175 § 2 of the Constitution: "Extraordinary courts or summary procedures may be established only during a time of war."

²⁵ Art. 175 § 2 of the Constitution: "The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts."

²⁶ European Commission for Democracy through Law (Venice Commission) (2017): Opinion No. 904 / 2017. Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts (Venice, 8-9 December 2017), CDL-AD(2017)031, published on 11. Decemner 2017; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)031-e);

EU history, the European Commission proposed to the Council of the European Union to take action under Article 7(1) of the Treaty on European Union to protect the rule of law in Europe as there was a risk of serious violation of the rule of law and judicial independence in Poland (EC, 2017)²⁷

In 2018, the amendments to the Act on the Organization of Ordinary Courts, the Act on the National Council of the Judiciary, and the Supreme Court Act²⁸ did not introduce any significant changes to the judiciary. However, the judgment of the Court of Justice of the European Union (CJEU) of 19 November 2019 in three joint cases²⁹ was important for disputes over the judiciary and the rule of law in Poland. In its judgment, the Court of Justice stated that the examination of the independence of the Disciplinary Chamber should belong to the Supreme Court itself. As a consequence, in its judgment of 5 December 2019³⁰, the Chamber of Labor and Social Security of the Supreme Court stated in the legal reasoning, *inter alia*, that the National Council of the Judiciary is not independent of the legislative and executive authorities, and that the Disciplinary Chamber of the Supreme Court is not a court within the meaning of EU law and national law (Case no. III PO 7/18). Subsequently, three chambers of the Supreme Court (Civil Chamber, Criminal Chamber, and Labor Chamber) adopted a resolution on 23 January 2020, which stipulated that the right to adjudicate on judges appointed on the basis of the requests of the neo-NCJ may be questioned.³¹ In order to obtain a full picture of the confusion regarding the judiciary in Poland, we may refer to the case law of the Constitutional Court, which was elected in its entirety by the ruling bloc of right-wing parties. In its judgment of 21 April 2020, the Constitutional Court, stated in that the resolution of the three chambers of the Supreme Court is unconstitutional, the Treaty on European Union and the European Convention on Human Rights (CC Case no. Kpt 1/20).³² It was a judgment issued on the basis of the motion of Prime Minister for a settlement of the dispute over powers between the Sejm of the Republic of Poland and the Supreme Court, and between the President of the Republic of Poland and the Supreme Court. However, in the public space, this dispute was recognized as fictional. This judgment is also surprising because the Constitutional Court does not have the right to review the constitutionality of the judgments of ordinary courts or the Supreme Court; therefore, it is justified to recognize that the CC judgment does not have any legal effect on a resolution of the Supreme Court.

Another important stage in deepening legal disputes around the judiciary and the Disciplinary Chamber of the Supreme Court was the adoption of the Act of 20 December 2019 amending the Act on the Organization of Ordinary Courts, the Act on the Supreme Court and certain other acts³³. *Inter alia*, the amending Act stipulated that the judicial self-governance cannot concern itself with political matters and, in particular, it is forbidden to

²⁷ EC/European Commission (2017): Rule of Law: European Commission acts to defend judicial independence in Poland, Brussels, 20 Dec. 2017, https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367

²⁸ Act amending the Act on the Organization of Ordinary Courts, the Act on the National Council of the Judiciary, and the Act on the Supreme Court, *Dz. U.* 2018, item 848.; Act amending the Act on the Organization of Ordinary Courts and the Act on the Supreme Court and certain other acts, *Dz. U.* 2018, item 1045; the Act amending the Act on the Organization of Ordinary Courts and certain other acts, *Dz. U.* 2018, item 1443.

²⁹ Court of Justice of the EU/ CJEU Joined cases: C-585/18 A. K. v *Krajowa Rada Sądownictwa*; C-624/18 *CP v Sąd Najwyższy*; and C-625/18 *DO v Sąd Najwyższy*; (2020/C 27/07); *Official Journal of the EU*, Vol. 63, 27 January 2020; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0585>

³⁰ Judgment of the Chamber of Labor and Social Security of the Supreme Court, Case no. III PO 7/18.

³¹ Resolution of the combined Chambers of the Supreme Court: Civil, Criminal, and Labor Law and Social Security Chambers, Case no. BSA I-4110-1/20, of 23 January 2020.

³² Judgment of the Constitutional Court, Case no. Kpt 1/20.

³³ Act amending the Act on the Organization of Ordinary Courts, the Act on the Supreme Court and certain other acts, *Dz. U.* 2020, item 190.

adopt resolutions which undermine the principles governing the operation of the authorities of the Republic of Poland and its constitutional bodies. Some judges refused to adjudicate in panels including judges appointed by the President at the request of the neo-NCJ. Moreover, the abovementioned Act considered it unacceptable for an ordinary court (or another authority) to assess and establish the legality of a judicial appointment of a judge or the resulting entitlement to perform tasks in the field of justice (Article 42a. § 1).

In 2021, the European Commission filed a complaint against Poland with the CJEU asking for a declaration of infringement of EU law, considering that the aforesaid Act (2019) prohibited all national courts to examine the fulfillment of the Union's requirements concerning an independent and impartial tribunal previously established by law. The Commission also argued that the doubts as to the independence of the Disciplinary Chamber of the Supreme Court made its jurisdiction to adjudicate in cases concerning the status of judges and deputy judges and the performance of their office questionable. In response, the Vice-President of the Court of Justice of the EU issued the decision in case C-204/21, *Commission v Poland* of 14 July 2021³⁴, obliging Poland to immediately suspend the application of national provisions relating in particular to the powers of the Disciplinary Chamber of the Supreme Court. In the event that the Disciplinary Chamber continued to operate, Poland was obliged to pay a periodic penalty of EUR 1 million per day. It is worth noting that actions taken by the EU institutions should not be considered an attempt to interfere in the organization of the Polish judiciary, but only to ensure the independence of the judges, which is possible due to the fact that Polish judges are also European judges.³⁵

The judgment of the Court of Justice of the EU in case C-791/19³⁶, issued on 15 July 2021, is even more important. Recalling that the rule of law is a common value of the EU Member States, the CJEU ruled that a Member State may not change its legislation in a way that would weaken the protection of the value of the rule of law, specifically expressed in Article 19 TEU. The CJEU also argued that the organisation of administration of justice is the sole competence of the Member State but, when exercising this competence, the Member State is required to comply with the obligations arising under EU law, in particular Article 19 § 1 (para.2) of the TEU (remedy for effective legal protection). This applies, *inter alia*, to disciplinary proceedings against judges, which should be conducted by authorities meeting the independence requirements. However, this requirement is not met by the Disciplinary Chamber of the Supreme Court due to doubts as to the independence of the National Council of the Judiciary, the composition of which is influenced to such a large extent by the legislative and executive powers. Thus, the Disciplinary Chamber does not ensure independence and impartiality, and Poland is in breach of its obligations under Article 19 § 1 (para.2) of the TEU (CJEU case C-791/19).

In the case *Reczkowicz v. Poland* (Appl. no. 43447/19),³⁷ the European Court of Human Rights (ECtHR) examined the issue of appointing the Disciplinary Chamber judges and

³⁴ CJEU case: Order of the Vice-President of the Court, C-204/21 *Commission v Poland* of 14 July 2021, <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-204/21&jur=C>

³⁵ See: ECtHR case: *Baka v. Hungary* (Appl. no. 20261/12), Judgment of 27 May 2014 (violation of the right to freedom of expression of the President of Hungary's Supreme Court for public criticism of judicial reforms), https://actu.dalloz-etudiant.fr/fileadmin/actualites/pdfs/JUIN_2014/CASE_OF_BAKA_v._HUNGARY.pdf

³⁶ CJEU case: Judgment of the Court of Justice of the EU (Grand Chamber) in case C-791/19, *European Commission v Republic of Poland* (Disciplinary regime applicable to judge) of 15 July 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0791>

³⁷ ECtHR case: *Reczkowicz v. Poland* (Appl. no. 43447/19), Judgment of 22 July 2021, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%7B%2243447/19%22%7D,%22itemid%22:%7B%22001-211127%22%7D%7D>

the the violation of the applicant's right to an impartial and independent "tribunal established by law" under Article 6(1) of the ECHR. In its judgment of 20 July 2021, the Court stressed the unacceptable influence of the legislative and executive powers on the judicial appointments.

In response to these judgments, primarily the CJEU judgment, Poland adopted the Act of 9 June 2022 amending the Supreme Court Act and certain other acts (2022).³⁸ Undoubtedly, its most important solution was the liquidation of the Disciplinary Chamber of the Supreme Court and the establishment of the Professional Liability Chamber in its place, which is composed of 11 judges (Article 22a § 1).³⁹ While the change was largely ostensible, the Act envisaged that the process of appointing these judges would take place in two stages. In the first stage, the First President of the Supreme Court draws 33 judges from among all Supreme Court judges (excluding court officials) (Article 22a § 1 – 6). As the amendment of the opposition parties (proposing that these judges should have at least 7 years of adjudicating experience in the Supreme Court) was rejected, it means that this number includes the judges who have been nominated at the request of the neo-NCJ to be appointed to the Supreme Court, as well as the judges who previously sat in the Disciplinary Chamber and expressed their willingness to continue adjudicating at the Supreme Court level. Thus, on 9 August 2022, 17 judges nominated at the request of the new NCJ and 16 judges whose status was generally undisputable were drawn. In the second stage of this process, the President of the Republic of Poland (together with the Prime Minister) decides who will ultimately adjudicate cases in the Professional Liability Chamber; under the law, it is the head of state who ultimately appoints 11 judges from among these 33 candidates, but the act on their appointment is countersigned by the President and the Prime Minister. It means that two most important representatives of both executive power authorities decide on the composition of this Chamber. The appointed judges may not refuse to adjudicate in the Professional Liability Chamber (Article 22a § 8).

Therefore, the liquidation of the Disciplinary Chamber and the establishment of the Professional Responsibility Chamber is hardly a significant change that meets the expectations of the European Union, most of the judiciary and the legal doctrine. This is an ostensible change because the new body cannot be recognized as independent, impartial and autonomous. The Act amending the SC Act (2022) has not resolved the problem of the neo-NCJ appointments, nor does it guarantee that judges can challenge the status of another judge without the risk of being held liable in disciplinary proceedings.

6. CONCLUSION

The conducted analysis shows that the Polish constitutional crisis related to disputes over the judiciary is constantly deepening. While the crisis was initially associated only with the Constitutional Court, over time it has spread to ordinary courts and the Supreme Court. Unfortunately, the current Constitutional Court, which is composed entirely of the judges elected by the Sejm after 2015 (including the highly active former deputies of the ruling party), ceased to play the role envisaged in the Polish Constitution. The number of cases reviewed by the Constitutional Court has significantly decreased, as well as the quality of judicial

³⁸ Act amending the Act on the Supreme Court and certain other acts, *Dz. U.*, 9 June 2022, item 1259. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220001259/T/D20221259L.pdf>

³⁹ Notably, the existing judges of the Disciplinary Chamber are given a chance to decide whether they want to adjudicate in other Supreme Court chambers or to retire.

decisions and justifications; but, above all, the Court is used to legitimize the actions of the current government, which raises reservations on the constitutionality of its decisions and their compliance with the Constitution. In particular, it refers to judgments on the relationship between domestic law and EU law. After the full subordination of the presidents and vice-presidents of ordinary courts to the Minister of Justice was established, the efficiency of ordinary courts has decreased and the time for considering cases and issuing judgments has lengthened. The abolition of the Disciplinary Chamber of the Supreme Court and its replacement with the Professional Liability Chamber is a superficial change, which does not bring any qualitative and substantial reforms in terms of judicial independence.

However, the consequences of the unconstitutional composition of the National Council of the Judiciary (neo-NCJ), under the dominant impact of politicians from the ruling parties, seem to be the most important reason for the deepening crisis. It ultimately translates into substantial doubts about the independence of judges appointed by the President of the Republic at the request of the NCJ. In that regard, we may refer to the resolution of the panel of 7 judges of the Supreme Court in the Case no. I KZP 2/2 of 22 June 2022,⁴⁰ which states:“(1) The National Council of the Judiciary established in accordance with the provisions of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (*Dz. U.* 2018, item 3) is not a body identical to the constitutional body whose composition and method of selection are regulated by the Constitution of the Republic of Poland, particularly in Art. 187 § 1. (2) There are no grounds to assume *a priori* that each ordinary court judge who was nominated after 17 January 2018, as a result of participating in the competition called by the National Council of the Judiciary, does not meet the minimum standard of impartiality, nor that their appointments are unlawful within the meaning of Article 439 § 1 point 2 of the Criminal Procedure Code. It applies only to the Supreme Court judges who have been approved under such conditions.” One may wonder whether this legal reasoning is fully correct. We may also raise the question about the independence of those judges who have been promoted and transferred to district courts and courts of appeal after that date. Yet, it undoubtedly reflects an attempt to resolve the deepening problem of millions of judgments issued by judges appointed in such circumstances. As announced by the ECtHR in 2023, the issues of independence of judges nominated by the so-called “neo-NCJ” and the method of judicial appointments have been raised in complaints filed by citizens and judges in the Republic of Poland (Jałoszewski, 2023).

In this study, we highlighted only the most important elements of the deepening crisis concerning the judicial independence and the rule of law in Poland within the judiciary. There are many other factors, such as the refusal of the President of the Republic to appoint judges (to the Supreme Court, *inter alia*), at the proposal of the National Council of the Judiciary in its constitutional composition, where judges were elected by judges (not by politicians). All things considered, it comes as no surprise that the European Union has decided to withhold the funds from the Reconstruction Fund to the Republic of Poland due to serious concerns over judicial independence, the rule of law, breach of human rights of Polish citizens and disciplinary proceedings against judges who invoke EU law, and non-compliance with the ECtHR and ECJ judgments (DW, 2023).⁴¹

⁴⁰ Resolution in the Supreme Court Case no. I KZP 2/22 of 22 June 2022.

⁴¹ DW/*Deutsche Welle* (2023). Rule of law: EU reprimands Poland and Hungary; B. Riegert, 9. July 2023, <https://www.dw.com/en/rule-of-law-eu-reprimands-poland-and-hungary/a-66165982>

REFERENCES

- Banaszak, B. (2012). *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, C. H. Beck.
- Bojarski, Ł., Grajewski K., Kramer J., Ott G., Żurek W. (2019). *Konstytucja. Praworządność, Władza Sądownicza. Aktualne problemy trzeciej władzy w Polsce*, Wolters Kluwer.
- Domańska, A. (2020). Czy skarga nadzwyczajna do Sądu Najwyższego spełniła swoje zadanie, „*Acta Universitatis Lodzianis. Folia Iuridica*”, no. 93, 2020, pp. 103-116.
- Garlicki, L. (2005). Uwaga 7 do art. 187 / In / Garlicki L. (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. IV, Wydawnictwo Sejmowe.
- Garlicki, L., (2018). *Polskie prawo konstytucyjne. Zarys wykładu*, Wolters Kluwer.
- Godlewski M., (2019) Krajowa Rada Sądownictwa / In: Kruk M., Olszówka M., Godlewski M., Jarosz M., Laskowska M., Zaleśny J. (ed.), *Ochrona praw i wolności. System instytucjonalny w Rzeczypospolitej Polskiej*, Difin, pp. 197 - 208.
- Helsinki Foundation for Human Rights (2021). A Tool of the Government: The functioning of the Polish Constitutional Court in 2016-2021, Report within the project „Monitoring the human rights protection system in Poland”, the Helsinki Foundation for Human Rights, Warszawa; https://hhr.pl/upload/2022/01/a-tool-of-the-government_-the-functioning-of-the-polish-constitutional-court-in-2016-2021.pdf
- Kaczmarczyk-Kłak, K. (2017). Krajowa Rada Sądownictwa – charakter prawny, skład osobowy oraz struktura wewnętrzna /In: *Ustrój polityczny Rzeczypospolitej Polskiej*, red. J. Poślusznny, W. Skrzydło, K. Eckhardt, WSPiA Rzeszowska Szkoła Wyższa, pp. 438-439.
- Łętowska E., Łętowski J., (1996)., Co wynika dla sądów z konstytucyjnej zasady podziału władz, In/ *Konstytucja i gwarancje jej przestrzegania : księga pamiątkowa ku czci prof. Janiny Zakrzewskiej*, Wydawnictwo Trybunału Konstytucyjnego.
- Machnikowska, A. (2018). *O niezawisłość sędziów i niezależność sądów*, Wolters Kluwer.
- Piotrowski, R. (2017). Konstytucyjne granice reformowania sądownictwa, In / *Krajowa Rada Sądownictwa*, no 2, 2017, pp. 5 – 29.
- Skotnicki, K. (2020). Ginčasdėl Lenkijos Konstitucinio Tribunalosudėties/ In /*Lietuvosir Lenkijos konstitucinesteises aktualios. Straipsnių rinkinys*, Vilnius universitetas, 2020, p. 105-114.
- Skotnicki, K. (2020). Problem konstytucyjności składu obecnej Krajowej Rady Sądownictwa w Polsce, In : *Acta Universitatis Lodzianis. Folia Iuridica*, no 93, 2020, pp. 47-59.
- Radajewski, M. (2019). Status prawny Izby Dyscyplinarnej Sądu Najwyższego oraz jej sędziów / In: *Przegląd Sądowy*, no. 5, 2019, pp. 23 - 35.
- Rakowska-Trela, A. (2019). Krajowa Rada Sądownictwa po wejściu w życie nowelizacji z 8.12. 2017 r. – organ nadal konstytucyjny czy pozakonstytucyjny? / In:/ Bojarski Ł., Grajewski K., Kremer J., Ott G., Żurek W. (ed.), *Konstytucja – Praworządność – Władza sądownicza. Aktualne problemy trzeciej władzy w Polsce*, Wolters Kluwer, pp. 107 – 122.
- Szmyt, A. (2019)., Kilka uwag w sprawie nowelizacji ustawy o krajowej radzie sądownictwa w Polsce / In: A. Krunková (ed.), *Organizácia súdnej moci v Poľskej republike, Českej republike a Slovenskej republike (ústavné východiská a ich presadzovanie v ústavno-politickej praxi). Zborník príspevkov z medzinárodnej vedeckej konferencie Organizácia súdnej moci v Poľskej republike, Českej republike a Slovenskej republike (ústavné východiská a ich presadzovanie v ústavno-politickej praxi) konanej v dňoch 16.–18. mája 2018 v Košiciach*. Vydavateľstvo Šafárik Press UPJŠ v Košiciach, pp. 120–131.
- Trzciniński, J. (1999). *Uwaga 11 do art. 173*, In /L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, Wydawnictwo Sejmowe.
- Wiliński, P. (2016). Komentarz / In: Garlicki L., Derlatka M, Wiącek M. (ed.), *Na straży państwa prawa. Trzydzieści lat orzecznictwa Trybunału Konstytucyjnego*, Wolters Kluwer, pp. 732 - 750.
- Wróbel, W. (2019). Izba Dyscyplinarna jako sąd wyjątkowy w rozumieniu art. 175 ust. 2 Konstytucji RP / In: *Palestra*, no. 1-2, pp. 17 – 36.

Legal Acts

- The Constitution of the Republic of Poland of 2nd April 1997, *Dziennik Ustaw*, No. 78, item 483. <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>
- The Constitutional Court Act, *Dziennik Ustaw*, of 25 June 2015, item 1064; [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)009-e)
- Act of 19 November 2015 amending the Constitutional Court Act, *Dziennik Ustaw*, item 1928; [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)009-e)
- Act of 22 December 2015 amending the Act on the Constitutional Tribunal, Dz. U. 2015 item 2217.
- Act on the National Council of the Judiciary, *Dziennik Ustaw*, 2001, nr 100, item 1082.

- Act on the National Council of the Judiciary, *Dziennik Ustaw*, 2011, nr 126, item 714.
- Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, *Dziennik Ustaw*, 2018, item 3.
- Act of 8 December 2017 on the Supreme Court, *Dziennik Ustaw* 2018, item 5. https://www.sn.pl/en/about/SiteAssets/Lists/Status_prawny_EN/AllItems/Act%20on%20the%20Supreme%20Court%20English%20version.pdf
- Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts, *Dziennik Ustaw* of 2022, item 1259, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220001259/T/D20221259L.pdf>
- Act on the Organisation of Ordinary Courts of 27 July 2001 (amended in 2011, 2017, 2019), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)004-e)
- Act of 12 July 2017, amending the Act on the Organisation of Ordinary Courts and certain other acts, *Dziennik Ustaw*, item 1452.
- Act of 12 April 2018 amending the Act on the Organization of Ordinary Courts, the Act on the National Council of the Judiciary, and the Act on the Supreme Court, *Dziennik Ustaw* 2018, item 848.
- Act of 10 May 2018 amending the Act on the Organization of Ordinary Courts, the Supreme Court Act on and certain other acts, *Dziennik Ustaw* 2018, item 1045.
- Act of 20 July 2018 amending the Act on the Organization of Ordinary Courts and certain other acts, *Dziennik Ustaw* 2018, item 1443.
- Act of 20 December 2019 amending the Act on the Organization of Ordinary Courts, the the Supreme Court Act, and certain other acts, *Dziennik Ustaw* 2020, item 190.
- Act amending the Act on the Organization of Ordinary Courts, the Act on the Supreme Court and certain other acts, *Dz. U.* 2020, item 190.
- Act of 9 June 2022 amending the the Supreme Court Act and certain other acts, *Dziennik Ustaw* 2022, item 1259.
- Regulation of the President of the Republic of Poland of February 11, 2019 amending the regulation - Rules of Procedure of the Supreme Court, *Dziennik Ustaw* of 2019, pos. 274.
- Announcement of the Marshal of the Sejm of the Republic of Poland of 5 July 2018 on the publication of the consolidated text of the Act on the status of judges of the Constitutional Court, *Dziennik Ustaw* 2018 item 1422.
- Announcement of the Marshal of the Sejm of the Republic of Poland of 22 November 2019 on the publication of the consolidated text of the Act on the organization and procedure before the Constitutional Tribunal, *Dziennik Ustaw* 2019 item 2393.
- CoE Opinion no. 904/2017, Strasbourg, 20 November 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)046-e)
- European Commission for Democracy through Law (Venice Commission) (2017): Opinion No. 904 / 2017. Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts (Venice, 8-9 December 2017), CDL-AD(2017)031, 11. December 2017; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)031-e);

Jurisprudence

- CJEU case: Judgment of the Court of Justice of the EU (Grand Chamber) in case C-791/19, *European Commission v Republic of Poland* (Disciplinary regime applicable to judge) of 15 July 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0791>
- CJEU case: Order of the Vice-President of the Court, C-204/21 *Commission v Poland* of 14 July 2021, <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-204/21&jur=C>
- CJEU Court of Justice of the EU Joined cases: C-585/18 *A. K. v Krajowa Rada Sądownictwa*; C-624/18 *CP v Sąd Najwyższy*; and C-625/18 *DO v Sąd Najwyższy*; (2020/C 27/07); *Official Journal of the EU*, Vol. 63, 27 January 2020; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0585>
- ECtHR Cases: *Grzęda v. Poland* (Appl. no.43572/18), Grand Chamber judgment of 15 March 2022; *Żurek v. Poland* (Appl. no. 39650/18), Grand Chamber judgment of 16 June 2022.
- ECtHR case: *Reczkowicz v. Poland* (Appl. no. 43447/19), Judgment of 20 July 2021, <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2243447/19%22%2C%22itemid%22%3A%22001-211127%22%7D>
- ECtHR case: *Baka v. Hungary* (Appl. no. 20261/12), Judgment of 27 May 2014, https://actu.dalloz-etudiant.fr/fileadmin/actualites/pdfs/JUIN_2014/CASE_OF_BAKA_v_HUNGARY.pdf
- Judgment of the Constitutional Court of Poland, Case no. K 11/93, of 9 November 1993
- Judgment of the Constitutional Court of Poland, Case no. K 12/03, of 18 February 2004,
- Judgment of the Constitutional Court of Poland, Case no. K 25/07, of 18 July 2007
- Judgment of the Constitutional Court of Poland, Case no. K 45/07, of 15 January 2009
- Judgment of the Constitutional Court, Case no. III KRS 1/11, OSNP 2012, no. 9–10, pos. 131.
- Judgment of the Constitutional Court of Poland, Case no. K 34/15, of 3 December 2015

Judgment of the Constitutional Court of Poland, Case no. K 35/15, of 9 December 2015
Judgment of the Constitutional Court of Poland, Case no. K 5/17, OTK-A 2017, of 20 June 2017.
Judgment of the Constitutional Court, file no Kpt 1/20, of 28 January 2020
Judgment of the Supreme Court of Poland, Case no. III KRS 1/11 (OSNP 2012), 15 March 2011
Judgment of the Supreme Court of Poland, Case no. III PO 7/18, of 5 December 2019
Judgment of the Supreme Court of Poland, Case no. I KZP 2/22, of 22 June 2022.
Judgment of the Chamber of Labor and Social Security of the Supreme Court, Case no. III PO 7/18.
Resolution of the panel of 7 judges of the Supreme Court Case no. I KZP 2/22, 2 June 2022.
Resolution of the combined Chambers of the Supreme Court: Civil Chamber, Criminal Chamber, and Labor Law and Social Security, of 23 January 2020, Case BSA I-4110-1/20.

Online Sources

DW/Deutsche Welle (2023). Rule of law: EU reprimands Poland and Hungary; B. Riegert, 9. July 2023, <https://www.dw.com/en/rule-of-law-eu-reprimands-poland-and-hungary/a-66165982>
EC/European Commission (2017): Rule of Law: European Commission acts to defend judicial independence in Poland, Brussels, 20 Dec. 2017, https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367
OKO Press (2022): Jałoszewski, M., *Cios w neo-sędziów SN. Aż 35 skarg do ETPCz na legalność Manowskiej i innych z Izby Cywilnej*, 2022, <https://oko.press/cios-w-neo-sedziow-sn-az-35-skarg-do-etpcz-na-legalnosc-manowskiej-i-innych-z-izby-cywilnej>.
The Supreme Court of the Republic of Poland (2023): Organization; <https://www.sn.pl/en/about/SitePages/OrganizationIOZ.aspx> (accessed 22.10.2023).

PRAWNI SPOROVI O PRAVOSUĐU: ELEMENT USTAVNE KRIZE U POLJSKOJ

Članak je pokušaj da se prikaže i objasni suština pravnih sporova o zakonskim rešenjima donetim u oblasti funkcionisanja pravosuđa u Poljskoj posle 2015. godine, koji su bili predmet kritičke ocene međunarodnih pravosudnih tela kao i poljske jurisprudencije. Ustavna kriza u Poljskoj odnosi se na funkcionisanje Ustavnog suda, Vrhovnog suda, redovnih sudova i upravnih sudova, kao i Nacionalnog saveta sudstva. Nacionalni savet sudstva nije organ pravosuđa, ali se njegova ustavna ovlašćenja odnose na pravosuđe, dok zakonske promene koje su odnose na način imenovanja njegovih članova predstavljaju jedan od suštinskih elemenata ustavne krize u Poljskoj. Da bi se potpunije prikazala složenost problema, u članku se razmatraju zakonodavne aktivnosti, sadržaj izmena i dopuna zakonodavnih akata, i posledice koje donosi unošenje manjkavih propisa u pravni poredak Treće Republike Poljske, kako na nacionalnom tako i na međunarodnom nivou.

Ključne reči: *Ustav, sudija, nezavisnost, Nacionalni savet sudstva, Republika Poljska.*