

18 December 2017

Mr. Frans Timmermans,
First Vice-President
European Commission
Rue de la Loi, 200
B 1049 Brussels

Dear First Vice-President,

The Network of the Presidents of the Supreme Judicial Courts of the European Union has been closely following the events concerning the Polish judicial system and issued a statement in spring 2017 expressing its concern over the intended judicial reforms and the rule of law in Poland. The situation in Poland was once again under discussion at the Conference of the Network of Presidents held in Tallinn on the 19-20 October this year.

In September 2017 the President of Poland submitted to the Parliament of Poland the Draft Act on the Supreme Court and the Draft Act on the National Council of the Judiciary of Poland, which the Lower House of Parliament approved on the 8th December 2017. The Network of Presidents expresses grave concerns that the intended legislative changes could seriously undermine the independence of the Polish judiciary and the Supreme Court as well as the legal certainty within the European Union.

The Network of Presidents notes with worry that the intention to lower the mandatory retirement age of Supreme Court judges would have a significant impact on the current composition of the Supreme Court. Over one third of judges, including the First President of the Supreme Court, would have to leave office. The Network of Presidents is deeply concerned that the termination of office of Supreme Court judges severely impedes the autonomy and the independence of the Court. It may also hamper the effectiveness of court proceedings in Poland. The Network of Presidents recalls that the abrupt pre-term removal of judges is not in line with European standards and the case-law of the Court of Justice of the European Union (case C-286/12, *Commission v Hungary*).

The Network of Presidents stresses that the intended amendment whereby the majority of the members of the National Council (whose main task is the nomination of judges) would be elected by the Parliament is not recommended by the Venice Commission. The Network of Presidents also recalls Opinion no. 10 of the Consultative Council of European Judges which states that it is essential for the maintenance of the independence of the judiciary that the appointment of judges is independent and not made by the legislature (p 48). Opinion no. 10 also underlines that in order to guarantee the independence of the authority responsible for the selection and career of judges, there should be rules ensuring that judge-members of this authority are selected by their peers, i.e. other judges (p 25). The intended legislative changes would give the Polish Parliament paramount control over the election of judges which in the long run politicises the judiciary and undermines its independence.

The Network of Presidents reiterates its statement from spring 2017 in which the Network stressed that co-operation in the field of justice is largely based on mutual trust in the administration of justice within the European Union. The extraordinary complaint procedure proposed by the President of Poland significantly broadens the grounds which are generally recognised in Europe for reopening court proceedings. The Network is gravely concerned that the possible re-opening of Polish court proceedings of past 5 years under too vague or arbitrary conditions could seriously undermine legal security and mutual trust within the European Union. The Network recalls that legal certainty and trust are the preconditions of judicial co-operation and therefore the preconditions of mutual recognition and enforcement of court decisions across Europe.

The Network of Presidents emphasizes that the judicial reforms approved by the Lower House of Parliament do not mitigate the concerns previously expressed by the Network. The Network of Presidents encourages the engagement of public debate on the respective legislation and the avoidance of unnecessary haste while reforming the judiciary.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Priit Pikamäe', with a long horizontal stroke extending to the right.

Priit Pikamäe
Chief Justice of Estonia
President of the Network