



Statement of the first President of the Supreme Court

Just a few days ago we commemorated a sad and symbolic date, one of the milestones of our collective memory: the 38th anniversary of the introduction of martial law in Poland.

It is not my intention at this point to provide an overall assessment of the martial law. I will draw your attention to only one aspect, strictly related to the law: the martial law was not only an obvious violation of the Constitution of the People's Republic of Poland (which, unfortunately, could not have been assessed objectively in the absence of a constitutional court), but, worse still, its introduction was against the essential principles of law in civilised countries. These include the requirement to properly legislate and promulgate normative acts, non-retroactivity of the law and, finally, the universal right of every citizen to a fair and public hearing by a competent, independent and impartial court established by an act of law. These rights were formally known in the so-called 'People's Poland' and were binding in its legal system. After all, the authorities of the People's Republic of Poland ratified the United Nations' International Covenant on Civil and Political Rights in 1977, agreeing to guarantee those rights.

However, I would like to recall the fact that martial law posed a dilemma for judges, who wondered what to do. Should they succumb to a law which may be perceived as such but violates higher standards? Should they go against natural law, against their own conscience and justice?

Only a handful of opportunists had no dilemmas: they brought disgrace upon themselves and their names are well-known today.¹ Those few who openly opposed the actions of the communist authorities, refusing to violate human and fundamental rights, are considered today to be true heroes. And the price of courage was high at the time: they were intimidated by the communist party and the secret services, faced ostracism, they were transferred between departments, ran the risk of dismissal from office by the Council of State, and often faced disciplinary liability.

¹ See M. Stanowska, *Postawy sędziów i prokuratorów w procesach politycznych z lat osiemdziesiątych*, [in:] M. Stanowska, A. Strzembosz, *Sędziowie warszawscy w czasie próby 1981-1988*, Warszawa 2005, p. 223nn.

Thirty eight years have passed. Exactly on 13 December 2019, the public was informed that a group of MPs had tabled a bill that could only be described in one way: a bill abolishing independent judiciary. The parliamentary print No. 69 issued by the Sejm of the 9th term of office can be seen as a worthy continuation of the lawlessness of the 1980s. It contains everything: it bans judges from exercising freedom of speech, it establishes a surveillance mechanism and dramatically restricts their right to have profiles in social media, it contains an extended catalogue of disciplinary offences formulated in the most vague words, and attempts to decide on the validity of judicial appointments through an act of law although this is a prerogative of the President, not the Parliament. Above all, however, the new bill prohibits the application of law. Yes, that is exactly the case. What else can we make of a situation where courts are restricted in the sphere of jurisdiction, and prohibited from investigating—to the detriment of the citizens—whether the powers of the authorities are observed in the light of the law? A violation of the existing Constitution, notably its Articles 2, 9, 10 and 91(3), is more than obvious here, although, as we can see, not obvious for everyone.

In order to explain why this bill is dangerous to all of us, regardless of our views and beliefs, we need to recall one thing: citizens cannot be free without independent courts and autonomous judges. Nor is there a fair, democratic country without an honest parliamentary debate. It is not the judges who are destroying and anarchising the Polish State. It is the political authorities that are responsible for destroying the Constitutional Court. The authorities have also twice undertaken the so-called “reform” of the Supreme Court, attempting to remove its judges and bodies in violation of the Constitution and international law and, when these attempts failed, the authorities decided to conquer this institution using the method of “small steps”. The honourable title of judge was tarnished by the words of the former prosecutor and member of the Polish United Workers’ Party about the ‘servant mentality’ which judges should display and which is desired by the authorities. Nothing is what it appears to be anymore: the Constitutional Court is no longer the Constitutional Court, the National Council of the Judiciary is no longer the National Council of the Judiciary, and courts may cease to be courts soon, remaining just a silent extension of the will of the executive power.

Even if repeated many times, a lie does not become the truth. As free citizens of the proud Republic of Poland, we do not live and do not want to live in an authoritarian country. This is what we rejected in 1981, and we do not concede it today. Poland is a Member State of the European Union, where high requirements are imposed on the authorities, and where any court can submit a question to the Court of Justice of the European Union as set out directly in Article 267 of the Treaty on the Functioning of the European Union - the Treaty that our Nation adopted in a referendum, and the Treaty which was amended with a significant contribution of the late President of Poland Lech Kaczyński to a shape embodied today in the Treaty of Lisbon. In such a country, one cannot silence judges who are allowed not only to have views on social life, but are also allowed to express them

publicly, and this is an international standard binding on Poland.² Judges exercise this right, obviously in a dignified and balanced way, and will continue to do so as citizens and humans.

I would also like to remind all Members of Parliament and Senators of the Republic of Poland that the judgments of the CJEU are binding not only in a single case, but can be applied in the same way in any subsequent case where the same problem arises.³ The Polish law and the European law run along the same stream; for us, Polish and European judges, as we are, there is no contradiction between the Constitution and the Treaty. Courts cannot be muzzled by judgments of the Constitutional Court, which will restrict the institution of questions for a preliminary ruling since its decisions can never prevent access of Member States' courts to the Court of Justice.⁴ Such a solution would directly lead Poland out of the European Union. Therefore, the interpretation of the Constitution, laws and treaties which judges are allowed to apply may not be developed in the private offices of political parties and there will be no consent to it. No act of law can change this. This issue is beyond any negotiation. Just as history has acknowledged that the people who used to be called 'troublemakers' and 'brawlers' were actually right, I do believe that tomorrow it will acknowledge that those who issue rulings on behalf of the Republic of Poland are also right.

I therefore ask that hatred towards judges and courts is finally ceased to be used as a weapon in the struggle for power, especially as repressions will be a sad expression of helplessness rather than a manifestation of power, as was the case in 1981. I call on the government and parliament to exercise moderation and engage in an honest discussion on how to resolve the state of affairs that these authorities are culpable of, and how to do it for the common good. I ask that a real discussion on repairing the justice system in Poland begins. Finally, I call for an end to the campaign of smearing and mocking those who have offered their lives and energy in the service of the Republic of Poland: judges of common courts, administrative courts, military courts and the Supreme Court.

For it is our Independent Poland, rather than a victory of one party or another in the next elections, that is the ultimate good.



² See 'Basic Principles on the Independence of the Judiciary', adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

³ Court of Justice judgments: of 27 March 1963, *Da Costa Da Costa en Schaake NV and Others*, joined cases 28 to 30-62, EU:C:1963:6; of 6 October 1982, *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*, case 283/81, EU:C:1982:335.

⁴ CJEU judgments: of 22 June 2010, *Aziz Melki and Sélim Abdeli*, joined cases C-188/10 and C-189/10, EU:C:2010:363; of 15 January 2013, *Jozef Krížan and Others v Slovenská inšpekcia životného prostredia*, case C-416/10, EU:C:2013:8.