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POLAND

JUDICIAL REFORMS MUST NOT THREATEN FAIR TRIAL

On 24 July, President Duda vetoed two of the three controversial legislative amendments regarding judicial reforms but signed a third amendment. However, he veto can be overturned. The bills threaten to undermine the independence of the judiciary by awarding the government direct control over Polish courts.

Poland's constitution won partial reprieve last Monday when President Duda announced his decision to veto two contentious judicial reforms, one to the Law on the National Council of Judiciary and the other to the Law on the Supreme Court. Adopted by Parliament on 15 July, the two bills served to curb the independence of the judiciary by awarding the government direct power over Poland's courts, jeopardizing fair trial guarantees.

The two bills have now been sent back to the lower chamber of Parliament (Sejm) where they can still be forced through, overriding the President's vetoes. The Speaker of the lower chamber will direct the two bills to the Parliamentary Commission which prepares a motion on either adopting the bills again or a contrary motion to reject them. However in order to do the former, two conditions must be met: at least half the members of the lower chamber of Parliament must participate in the vote and there needs to be a three fifth majority in order to be passed. If the lower chamber votes to adopt the law, the President has seven days to sign it.

There is also the risk that the government may present new, and possibly more worrying, amendments to the two laws and get it passed through Parliament with a simple majority. While Amnesty International welcomes the President's announcement last Monday to veto the two bills, his decision a day later, on 25 July, to sign the bill on the Law on the Common Courts - which gives the Ministry of Justice - who also serves as the Prosecutor General - power to appoint the heads of courts, demonstrates the gravity of Poland's dangerous direction. The bill, published on 28 July, will enter into force on 12 August.

These reforms, in breach of Poland's own Constitution (Article 45), EU law and its other obligations under international human rights law, threaten to seriously compromise the independence of the courts and possess significant implications on both the rule of law and the right to a fair trial.

Please renew your messaging without delay.

- * Urge Parliament to reject the two amendments by voting against any motion to readopt the two bills.
- * Urge the President to veto any new laws that breach the independence of the judiciary and put the right to fair trial at risk.
- * Urge both the President and Parliament to ensure any reform of the judiciary is in line with international fair trial standards.

Send your appeals to

President of the Republic of Poland

Andrzej Duda
Kancelaria Prezydenta Rzeczypospolitej Polskiej
ul. Wiejska 10
00-902 Warsaw, Poland
Twitter: @prezydentpl
Fax: 011 48 22 695 2238
Email: listy@prezydent.pl
Facebook: facebook.com/andrzejduda
Salutation: Dear President

Speaker of the lower chamber

Marek Kuchcinski
Kancelaria Sejmu
ul. Wiejska 4/6/8
00-902 Warsaw, Poland
Twitter: @MarekKuchcinski
Email: Marek.Kuchcinski@sejm.pl
Salutation: Dear Mr Speaker

Please send a copy to

Mr. Lukasz Mikolaj Weremiuk
Chargé d'Affaires, Embassy of the Republic of Poland
443 Daly Avenue
Ottawa, Ontario K1N 6H3
Fax: (613) 789-1218
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Additional information

The reforms as presented by the government violate the independence of judiciary and are contrary to Poland's obligations under Article 6 of the European Convention on Human Rights, Article 14(1) of the ICCPR, Article 45 of the Constitution of the Republic of Poland and Article 47 of the Charter of the Fundamental Rights of the European Union.

The Government of Poland has continuously attempted to undermine the rule of law and restrict human rights, including the rights to freedom of expression and peaceful assembly, the right to privacy and women's sexual and reproductive rights. Although these attempts have been met with a strong response by civil society, the government's reaction to protests further confirms its resolve to silence critical voices and put the judiciary under political control.

On 25 July, the President signed the amendment on the Law on Common Courts. The law will enter into force on 12 August. The amendment puts the power to appoint presidents and vice-presidents of the courts into the hands of the Minister of Justice, who is also the Prosecutor General, and thus already possesses vast power and influence over judicial proceedings. The role of the Minister of Justice grew significantly with the amendment. The amendment also changes the procedures for the promotion of judges which fails to specify criteria for promotions and therefore introduce an element of arbitrariness.

On 29 July the European Commission (EC) announced it has triggered legal proceedings against Poland's infringements of EU law, in relation to the Common Courts bill. In the letter of Formal Notice they sent to Poland's government, the EC considers the amendment to be in breach of EU law by undermining the independence of the court, access to effective legal protection, and the right to remedy and fair trial (under both Article 19.1 of the Treaty of European Union and Article 47 of the EU Charter of Fundamental Rights). Poland has one month to respond to the Commission's letter.