

The Guardian

'Declaration of war': Polish row over judicial independence escalates

MPs vote through legislation just as top court rules its provisions unlawful



A protest against judicial reforms outside the Polish parliament earlier this month. Photograph: Omar Marques/Getty Images

Christian Davies in Warsaw and Jennifer Rankin in Brussels

Fri 24 Jan 2020 13.08 GMT

A confrontation between the Polish government and senior judges has escalated dramatically, prompting an anguished response in Brussels, after the country's supreme court and parliament issued conflicting rulings on the legality of judicial reforms.

The rival rulings, which concern attempts by the governing Law and Justice party (PiS) to assume direct control over the judiciary, have thrown the country's legal order into chaos, with judges now liable for prosecution for complying with rulings issued by their own supreme court.

PiS, a rightwing populist party, has spent more than four years trying to take control of the country's system of courts and public prosecution, eroding the independence of most branches of the judicial system. "This is an extreme escalation by the Polish government," said Marcin Matczak, a professor of law at the University of Warsaw. "It has run out of arguments so it is resorting to brute force."

After taking office in 2015, PiS assumed direct control of the National Council of the Judiciary, a formerly independent body that oversees the appointment, promotion and discipline of all Polish judges. This allowed the government to fill a newly created judicial disciplinary chamber with party loyalists who have since proceeded to launch disciplinary proceedings against any judge who questions the new regime.

Judges involved in politically sensitive cases, or who have expressed opposition to challenges to judicial independence are frequently threatened with disciplinary proceedings and even criminal charges, and in many cases are subjected to state-led campaigns of intimidation.

In December, the Polish supreme court, which is still independent, ruled that the National Council of the Judiciary and the new disciplinary chamber were unlawfully constituted. The government responded with legislative proposals to make it illegal for any judge to question the legality of its appointments - in effect banning judges from complying with the supreme court ruling.

That led to a remarkable showdown on Thursday evening when the Polish parliament voted through the legislation just as the supreme court was declaring its provisions unlawful. In a show of defiance, the supreme court session was attended by all 60 judges from the three chambers that are not controlled by ruling party appointees.

The deepening crisis will fuel tensions between Poland and European institutions including the European commission and the European court of justice. In November, the ECJ ruled that it was for the Polish supreme court to decide the dispute, meaning that the Polish parliament has now in effect rebuked not only Poland's top court but the EU's top court as well.

Terry Reintke, a German Green MEP who sits on the European parliament's justice and home affairs committee, said: "This is more than bad news for democracy and freedom in Europe. We need full solidarity with all Polish citizens who stand up for the rule of law. Polish judges are European judges. The independence of the judiciary cannot be negotiable."

A European commission spokesperson said it was "very concerned about the rule of law situation in Poland, in particular about the final adoption of the law amending the law on the final organisation of ordinary courts".

The commission's vice-president, Věra Jourová, will visit Poland next week and stands ready to engage with Polish authorities, the spokesperson added.

Critics say the commission - and EU member states - have failed to do enough to prevent the slide in the rule of law in Poland, almost four years after the launch of a peer-review inquiry by EU ministers intended to confront the problem.

The European parliament passed a resolution last week stating that the situation in both Poland and Hungary had deteriorated since EU authorities triggered the sanctions procedure known as article 7.

"This is not just a declaration of war on the Polish legal order," said Matczak. "It is a declaration of war on our place in Europe."

Since you're here...

... we have a small favour to ask. More people, like you, are reading and supporting the Guardian's independent, investigative journalism than ever before. And unlike many news organisations, we made the choice to keep our reporting open for all, regardless of where they live or what they can afford to pay.

The Guardian will engage with the most critical issues of our time - from the escalating climate catastrophe to widespread inequality to the influence of big tech on our lives. At a time when factual information is a necessity, we believe that each of us, around the world, deserves access to accurate reporting with integrity at its heart.

Our editorial independence means we set our own agenda and voice our own opinions. Guardian journalism is free from commercial and political bias and not influenced by billionaire owners or shareholders. This means we can give a voice to those less heard, explore where others turn away, and rigorously challenge those in power.

We hope you will consider supporting us today. We need your support to keep delivering quality journalism that's open and independent. Every reader contribution, however big or small, is so valuable. **Support The Guardian from as little as £1 - and it only takes a minute. Thank you.**

Support The Guardian