

The most important assumptions to the next stage of the so-called “reform of the judiciary”

presented in Kaczyński’s interview, as well as in Morawiecki’s speeches, including in the European Parliament

The independence of the courts and their systemic separateness as a third authority that is capable of effectively controlling the actions of the executive and legislative authorities is to be finally liquidated under the guise of the reorganisation and the streamlining of the courts;

- **the actual liquidation of the Supreme Court**, in its constitutional formula. The Supreme Court is to be deprived of the powers to hear cassation appeals and cassation complaints (namely judgments of the last instance in criminal, civil and labour cases). This is a gross breach of the Constitution, because, according to Article 183, para. 1, the Supreme Court supervises the activity of the courts with regard to adjudication (judicial supervision). The Supreme Court will not exercise this supervision if it does not examine cassation appeals. According to Kaczyński’s announcement, the Supreme Court is to be a “small court”. Logically speaking, the Criminal, Civil and Labour Chambers, which are the chambers that examine cassation appeals and complaints, will be liquidated. The judges of these chambers (who have been such a thorn in the side of the ruling party – including by requesting key preliminary rulings of the CJEU) will probably be either downgraded or retired. Only the Chamber of Extraordinary Control and Public Affairs, which authorises elections, controls concession processes (e.g. for the media) and considers extraordinary appeals submitted by the minister of justice (a new instrument introduced by PiS, which allows final judgments that were passed a long time ago to be overturned and therefore oppresses political or ideological opponents – perfect examples are two such complaints against Judge Żurek in his private cases, which enable him to be financially harassed), will probably be left in the Supreme Court. The Supreme Court will

become a political and constitutional court, which will be fully controlled by the government, with only neo-judges appointed by neo-NCJ (without legal judges);

- the announced **provincial courts** will become the **most important** from the point of view of the authorities. They will be the core of the justice system ensuring control. There are to be only a few of them for the whole of Poland. They are to be both courts of appeal hearing appeals (second instance), as well as cassation courts hearing cassation appeals and cassation complaints. They will take over the substantive role of the Supreme Court. However, they will be under the full control of the ruling party, and the “most faithful of the faithful” are to be placed there. All of them will be appointed by the neo-NCJ, so, by definition, they will have a defective judicial status. But the establishment of the provincial courts will mean that all cases of interest to the authorities will be under the control of their own people;
- **liquidation of the courts of appeal**, of which there are a dozen or so in Poland and which hear appeals against decisions of the first instance courts (appeals and complaints). Courts of appeal are also a problem for the authorities, because, when hearing cases in the second instance, they frequently rule courageously and are not afraid of disciplinary sanctions. That is why they need to be liquidated. The fate of the appeal court judges is uncertain. Almost certainly, those who are loyal to the authorities will end up in the newly created provincial courts, while the rest will retire or be demoted to the regional courts;
- **liquidation of the district courts** (i.e. the courts of the first instance, which handle simpler cases, minor offences and civil cases of lesser value). Kaczyński announced that all district court judges will be transferred to the regional courts, which will now be the only courts of the first instance. On the one hand, everything will end up in “one bag”, namely cases of murder and theft of a bicycle, a dispute between neighbours over a plot of land and a case for damages worth billions. The assumption of the Polish judiciary (for decades) is that there is a division into district and regional courts in the first instance such that more experienced judges adjudicate on the more difficult and serious cases. Now, the inexperienced district court judges will adjudicate, for instance, in serious murder cases. On the other hand, in order to be appointed to the regional courts, all the district court judges will need

to be nominated by the new-NCJ, because their status will change (instead of a district court judge, to the position of which they were appointed by the president, they will now need to be appointed “regional court judges” – so there is no way that they will not pass through the new NCJ). This is how the plan to contaminate almost the whole of the judiciary through the nomination of the neo-NCJ, which currently constitutes grounds for legitimate judges to contest the status, will be implemented. Therefore, after the second stage of the “reform”, 90% the judges in the system will be neo-judges, instead of 10% as is the case today. 100% of judges in the Supreme Court and the provincial courts will be neo-judges;

- **the new regional courts** will have their own local divisions. In other words, for instance, the Regional Court in Warsaw will have its own local division in Przasnysz (this is the example given by Kaczyński). This will mean, among other things, that it will be possible to send unruly judges to these local divisions, 100–150 km from home, as punishment;
- **the liquidation of Disciplinary Chamber.** As Morawiecki stated in the European Parliament, this is not because this arises from the rulings of the CJEU, but because it has not lived up to expectations. In other words, it has not acted sufficiently radically in throwing out the independent judges that the authorities so abhor from the system. The key question is – **what will replace the Disciplinary Chamber?** It is more than certain that it will be replaced by another quasi-judicial body, which will also not meet the standards of independence and impartiality from the point of view of the Treaty criteria (Article 19 TEU and Article 47 of the Charter of Fundamental Rights). It is likely that the body deciding on the fate of judges will be positioned within the provincial courts. One way or another, it will be a body that is elected with the involvement of the neo-NCJ (it cannot be otherwise, because the authorities do not intend to liquidate the current neo-NCJ) and therefore, by definition, illegal. And furthermore, this time, the authorities will choose such people there that the machine of repression works more efficiently and without any surprises; the announced liquidation of the Disciplinary Chamber is therefore a trick, a ploy, a deception. It will by no means eliminate the pathological problem of the unlawful repression of Polish judges, prosecutors and lawyers;

- a key issue from the point of view of the Polish judiciary is still the **new National Council for the Judiciary (neo-NCJ)**. The authorities have no intention of liquidating it, and it is this body that will appoint judges to the reformed courts, making them (according to the judgments of the CJEU and the ECtHR) defectively appointed bodies. It will not be possible to restore the rule of law without liquidating the neo-NCJ;
- **the CJEU ruling of 14 July 2021** (interim measure) orders the freezing of the “Muzzle Act” and the reinstatement of the unlawfully suspended judges (Juszczyszyn and Tuleya). The Polish Government does not intend to do either one or the other. Polish judges are still being prosecuted under the Muzzle Act for directly applying EU law and implementing the CJEU and ECtHR judgments. Their cases are being brought before the Disciplinary Chamber;
- these changes are intended to **finally pacify the independence of the judiciary** and remove those judges who are brave, independent and simultaneously persecuted by the authorities from the system under the guise of organisational changes. This is because Kaczyński has stated explicitly that, in principle, there would be no vetting of judges, except in cases of “serious disciplinary offences”. Therefore, he clearly means those who he also says are anarchising the Polish justice system by applying European law. These are Judges Tuleya, Morawiec, Juszczyszyn, Żurek, Markiewicz, Frąckowiak, Synakiewicz, Piłśnik, etc.

#Free Courts Initiative

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