

THE EROSION OF THE RULE OF LAW AND OF JUDICIAL INDEPENDENCE IN POLAND SINCE 2015: THE COUNCIL OF EUROPE'S REACTION – BACKGROUND NOTE

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1. We have witnessed the rapid erosion of the Rule of Law in Poland since 2015 after the country's historic 'return to democracy' – membership of the Council of Europe in 1991 and the European Union in 2004 – built on the pioneering efforts of the *Solidarność* movement of the 1980s. It is difficult to comprehend how quickly a country that played a pioneering role in overcoming the past division between 'Eastern' and 'Western' Europe could backslide from being a 'paradigm' to a 'pariah'.²

THE COUNCIL OF EUROPE, THE RULE OF LAW AND POLAND

2. Poland became a member State of the Council of Europe on 26 November 1991, nearly 30 years ago. The country ratified the European Convention on Human Rights (ECHR) in 1993 and was – comparatively speaking – well in advance in remedying shortcomings in its constitutional, political and legal order in comparison with other States from Central and Eastern Europe.

3. Although Poland's compliance with ECHR standards has not always been a simple task,³ the country certainly does not come within the category of states in which major human rights abuses have been committed at a level which may fragilise the role and authority of the Strasbourg Court.⁴

INITIATIVES UNDERTAKEN BY THE COUNCIL OF EUROPE: THE ACTORS

The context

4. The Rule of Law has been severely undermined in Poland. This relates not only to

the erosion of judicial independence (primarily at the pinnacle of the judicial hierarchy) but concerns the embrittlement of the functioning of democratic institutions affecting the whole fabric of the now-polarised society in Poland. Suffice is to cite from a report issued by the Parliamentary Assembly in early 2020: There is a need to resolve the constitutional crisis over the composition of the Constitutional Tribunal (as well as to restore the legality of its composition and the full and unconditional implementation – & prompt publication – of all of its decisions). The so-called 'good reforms' of the judiciary and the justice system have cumulatively undermined and severely damaged judicial independence which are in conflict with well-established European standards. Harsh and intolerant political discourse has fostered a perception of impunity for hate speech and intolerant behaviour against minorities and other vulnerable groups. Media reforms have not addressed problems of the politicised and biased control of the public broadcaster. Also, the polarisation in the political environment has affected the space and important role played by the country's vibrant civil society.⁵

The Secretary General⁶ (& the Committee of Ministers)⁷

5. Although accountable to the Committee of Ministers, which is the executive body of the Organisation, the Secretary General possesses a substantial '*champ d'action*' – as the leading official of the Organisation, elected by the Assembly – to defend the interests of the Council of Europe if and when Rule of Law and human rights standards are at issue. As concerns developments in Poland the former incumbent

of this office, Mr. Thorbjørn Jagland, undertook a number of ‘behind-the-scenes’ initiatives in this respect, including contacts with Polish state officials when visiting Poland. One such occasion was seized when he opened, together with the then Foreign Minister, Jacek Czaputowicz, a conference in Warsaw, on 22 March 2019, on the role and position of NGOs in the Council of Europe; he also expressed his concern in a number of letters addressed to President Andrzej Duda and former Prime Minister Beata Szydło, as well as in a *tête-à-tête* meeting with President Duda in November 2016, when the latter came to Strasbourg for an exchange of views with the Committee of Ministers.

6. Back in July 2016 the Secretary General seized the Venice Commission for an Opinion on the compatibility of the 2016 Act on the Constitutional Tribunal – for the Venice Commission to undertake an analysis of this text in the light of Council of Europe Rule of Law standards (more details below). See also a recent letter written to the Polish Minister of Justice by the incumbent Secretary General, Ms. M. Pejčinović Burić, on 30 June 2021, expressing her concern about the Polish authorities questioning of a recent judgment rendered by the Strasbourg Court against Poland.⁸

7. The Committee of Ministers itself does not appear to have made any public statement or taken an official position in respect of the rule-of-law situation in Poland in the time period in question, although it may be safe to assume that this subject has been and continues to be broached at its *in camera* meetings.

The Human Rights Commissioner⁹

8. The respective office-holders of this post have often taken a strong stand with respect to the deteriorating human rights situation in Poland, be it the incumbent, Dunja Mijatović, or her predecessor Nils Muižnieks who undertook an impressive *in situ* 4-day visit to Poland in February 2016, subsequently returning to Poland on three occasions. Nils Muižnieks persistently addressed – to the Polish authorities – his concerns that ‘recent far-reaching changes in Poland’s institutional framework [...] undermine the rule of law.’¹⁰

9. Nils Muižnieks (now Amnesty International’s Regional Director for Europe) has published a detailed account of ‘democratic backsliding’ encountered in Poland during his

period as Commissioner.¹¹ During his term in office he correctly emphasized that major structural legislative initiatives require time and thorough consultation. He expressed concern about the precipitated, and indeed indecent manner in which amendments to the 2015 *Act on the Constitutional Tribunal* were pushed through Parliament, with a first reading on 17th December, followed by late night sittings on 23rd and 24th December 2015, with the President’s signing the text on 28th December, with the law coming into force on the same day, with no *vacatio legis* provided. Also, on 18 July 2017, he published an article in the *Gazeta Wyborcza* newspaper entitled ‘Napaści na wymiar sprawiedliwości dzielą społeczeństwo i niszczą zaufanie ludzi do wszystkich instytucji państwa’ [‘Attacks on the justice system divide society and destroy people’s trust in all state institutions’] pointing out that the authorities’ intentional ‘delegitimisation of the judiciary’ inevitably polarized society, emphasizing the inappropriateness of the executive and legislature authorities discourse discrediting the judiciary and undermining its authority.¹² Furthermore, with reference to, on the one hand, the *Act on Common Courts* and, on the other, the (then draft) *Act on the National Judiciary Council*, he echoed a point made by many other institutions, both Polish & abroad: an independent authority or court should determine the liability of judges who fail to carry out their duties in an efficient and proper manner, without the involvement of political bodies and in full compliance with the principles of a fair trial. And, as concerns councils for the judiciary, at least half of their members ought to be judges chosen by their peers (as has also been underlined by, e.g., the Venice Commission). In this connection, it is difficult to understand how the composition of the National Judiciary Council, determined by Article 187 of the *Polish Constitution*, can be changed by means of a (simple) statute.¹³

10. The present Human Rights Commissioner, Ms. Dunja Mijatović, undertook an *in situ* visit to the country from 11 to 15 March 2019. She continues to follow developments relating to the erosion of the independence of the judiciary and the prosecution service in Poland (also referring, in her report, to such issues as mass dismissal of court presidents, smear campaigns and the stigmatisation of specific judges),¹⁴ but has also – understandably, in view of her wide-ranging human rights mandate to provide advice

and identify shortcomings – focused her work on other matters such as sexual health and reproductive rights of women.¹⁵

The Consultative Council of European Judges

11. The Consultative Council of European Judges (CCJE),¹⁶ created in 2000 and composed exclusively of judges, is not as well known by legal professionals as it ought to be, as also is the case in respect of its 'sister' body, the Consultative Council of European Prosecutors (CCPE).¹⁷

12. Although the CCJE's main task is to contribute to an 'action plan' to strengthen the role of judges in member States, adopted by the Committee of Ministers in 2001, it possesses an advisory function on questions relating to independence, impartiality and competence of judges. The CCJE merits specific attention for two inter-related reasons: the position it has taken in 'commenting' on serious legislative infringements on the rule of law and in maintaining an accurate record of developments in its reports submitted to the Committee of Ministers, such as the one issued in the spring of 2020, covering the period of November 2017 to November 2019 of its activity.¹⁸

13. As to the CCJE's position – as well as that of its Bureau and its President – note can be taken of six specific instances between October 2016 and December 2019 in which the critical situation affecting attacks on judicial independence had been discerned.¹⁹

The Venice Commission

14. The European Commission for Democracy through Law (the Venice Commission) is an Enlarged Agreement consisting of 62 States, including all Council of Europe member States. It is the Organisation's advisory body on constitutional matters whose members sit in their individual capacity.

15. The role that it has played in the 'verification process' of Poland's compliance with Council of Europe (and indeed EU) Rule of Law requirements is highly respected and has been exemplary. Indeed, the Commission's 'Rule of Law Checklist' is considered as an essential benchmark for measuring States' compliance with one of the founding principles of the Organisation.²⁰

16. Suffice, for present purposes, is to list in chronological order the six separate Opinions the Commission has rendered with respect to Poland on this and related subjects between 2016 and 2020.

17. The first was issued upon a request made in December 2015 by the then Polish Minister of Foreign Affairs on the amendments to the Act of 25 June 2015 on the Constitutional Tribunal. In its Opinion, the Venice Commission referred to the crippling of the Constitutional Tribunal's effectiveness; and – *inter alia* – the unacceptable announcement, by the Government, that it would not publish (at the time) a judgment of the Constitutional Tribunal.²¹

18. The second opinion was requested by the Assembly's Monitoring Committee, in January 2016, principally on amendments to the Police Act. The Venice Commission recommended the introduction of additional checks to surveillance powers of the police & other law enforcement agencies.²²

19. The third request made in July 2016 by the Secretary General, as already indicated above, related to the Act on the Constitutional Tribunal. This text created, according to the Venice Commission, new obstacles to the effective functioning of the Constitutional Tribunal whose independence, according to the Commission, had been further undermined, in that according to the amendments it was no longer able to play its constitutional role as guardian of democracy, the rule of law and human rights.²³

20. The fourth request was made by the Assembly's Monitoring Committee, in May 2016, on the *Act of the Public Prosecutor*, as amended. The view of the Venice Commission was that the office of Minister of Justice & Public Prosecutor General should again be separated, but if maintained, this person should not be able to intervene in individual cases, as the merger results in excessive powers for one person.²⁴

21. The fifth, request for an opinion was made by the President of the Parliamentary Assembly, on 26 October 2017, on the two draft texts amending the *Acts on the National Council of the Judiciary & the Act on the Supreme Court*, as proposed by the President of Poland, as well as the *Act of 12 July 2017 on the Organisation of the Ordinary Courts*. In its Opinion, the Commission indicated, *inter alia*, that:

“The Act [on Ordinary Courts] and the Draft Acts [proposed by the President of Poland], especially taken together and seen in the context of the 2016 Act on the Public Prosecutor’s Office, enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to judicial independence as a key element of the rule of law.”²⁵

22. The sixth – urgent – request for an Opinion was made by the Marshall of the Polish Senate on 30 December 2019. This concerned amendments to the Law on the Ordinary Courts, the Law on the Supreme Court and some other laws, passed by the Sejm on 20 December, to be assessed by the Commission from the perspective of judicial independence (the text was scheduled for discussion by the Senate on 15–17 January 2020). In its Opinion, the Commission recalled strong concern it had already expressed (the 2017 reform caused a ‘legal schism’), clearly indicating that the December 2019 amendments would in no way resolve outstanding issues, but, to the contrary, risked making things worse.²⁶ As we know, the Senate’s proposal, based on, *inter alia*, the Venice Commission’s views, not to accept the new legislative proposals – known as ‘the Muzzle Law’ – was not accepted.

GRECO

23. The Group of States against Corruption (GRECO), also an Enlarged Agreement, was set-up in 1999 to monitor states’ compliance and effective implementation of anti-corruption standards based on mutual evaluation and peer pressure. GRECO, of which Poland was a founding member, currently comprises of all Council of Europe member States, Belarus, Kazakhstan and the USA.

24. At its plenary session in December 2017, GRECO decided to carry out *ad hoc* urgent evaluations of draft laws concerning the judiciary in Romania, and on two draft laws on the reorganisation of the Supreme Court and of the National Council of the Judiciary in Poland.²⁷

25. This was the first time GRECO had made use of Rule 34 of its Rules of Procedure, which was inserted in 2017, to allow for “*ad hoc* procedures in exceptional circumstances.” This Rule can be applied when an institutional reform, legislative initiative or procedural change may result in a serious violation of Council of Europe anti-corruption standards with respect to an issue

that has been subject to a GRECO evaluation round.²⁸ Thus, what at first sight might appear as a somewhat puzzling decision, this *ad hoc* procedure was triggered by ‘exceptional circumstances’ after GRECO had obtained, with respect to Poland, ‘reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.’²⁹ In its preliminary report in March 2018 GRECO found that the legislative amendments adopted in late in 2017, including laws on the National Council of the Judiciary, to the Supreme Court and to the Law on Ordinary Courts, did not comply with the Organisation’s anti-corruption standards. This finding was confirmed both in an Addendum to the *Fourth Round Evaluation Report on Poland* (Rule 34) in June 2018, after a GRECO evaluation team had carried-out an on-site visit to Poland in May 2018, and in its Addendum to the *Second Compliance Report*, adopted on 16 December 2019.³⁰

26. GRECO’s ‘great concern’ relating to the situation in Poland was transmitted by the President of GRECO to the Polish Minister of Justice on 24 February 2020; the letter was placed in the public domain.³¹

The Parliamentary Assembly

27. The Parliamentary Assembly is assigned the function of ‘deliberative organ’ by the Organisation’s Statute of 1949 and has the important role of, *inter alia*, electing judges to the ECtHR, the Human Rights Commissioner and the Secretary General. It is composed of 648 parliamentarians from the parliaments of the 47 member States. Its powers include proposing multilateral treaties, demanding action from governments, ‘monitoring’ the extent to which states respect the Organisation’s democratic standards, proposing sanctions (including recommending the exclusion or suspension of a member State) and highlighting and/or uncovering new facts about human rights violations.

28. After the President of the Assembly had called on her Polish parliamentary colleagues, on 22 December 2015, ‘not to enact – precipitously – legislation relating to the Constitutional Tribunal which may seriously undermine the Rule of Law,’ and the aborted attempt to hold an Urgent Procedure debate on the functioning of democratic institutions in Poland on 25 January 2016 (discussed below), the Monitoring

Committee was seized to prepare a report on this subject in May 2016.³² The Committee adopted its report on this subject in January 2020 – nearly 4 years later – on the basis of which the Assembly, on 28 January, added Poland to the list of 10 other States, including Azerbaijan, Russia, Turkey and the Ukraine who are subjected to a full monitoring procedure.³³

29. Poland has also found itself on the 'radar' of two other Assembly committees. In March 2016 the Committee on Political Affairs and Democracy held an exchange of views on 'the state of democracy and the rule of law in Poland' with the participation of Polish parliamentarians, civil society representatives and journalists.³⁴ The Committee on Legal Affairs and Human Rights has prepared three critical reports. In July 2017 in its report on the Venice Commission Checklist,³⁵ in a report issued in September 2017 entitled *New Threats to the Rule of Law in Council of Europe Member States: Selected Examples*, which led to the adoption, by the Assembly on 11 October 2017, of a Resolution with the same title dealing with five states, including Poland, specifying 'recent developments which put at risk respect for the rule of law, and, in particular, the independence of the judiciary and the principle of the separation of powers.'³⁶ The third report, entitled *Judges in Poland and the Republic of Moldova Must Remain Independent* was adopted by the Committee on 8 December 2020 and endorsed – in a strongly-worded Resolution – by the plenary Assembly on 26 January 2021.³⁷

30. As indicated above, it took nearly four years to open the monitoring procedure with respect to Poland. Why? Back in January 2016, a request was made by four political groups, the EPP, the Socialist Group, ALDE & the Unified European Left, supported by the Assembly's Bureau, for the Assembly to hold an 'Urgent Procedure' debate on 'The functioning of democratic institutions in Poland.' To the surprise of many, on the first day of the plenary, on Monday 25 January, this request failed to achieve the 2/3 majority, and the debate did not take place.³⁸ An 'explanation' for this can probably be found in a three-page letter addressed to the President of the Assembly, co-signed by the Marshals of the Sejm & Senate, which circulated amongst parliamentarians a few hours before the vote.³⁹ In the said letter mention was made to the fact that the Assembly ought

not to take a precipitated decision, in the light of the Foreign Minister's seizure of the Venice Commission, to 'allow us to focus our efforts on cooperation with the Venice Commission' and that 'a concrete solution to the problem' relating to the Constitutional Tribunal 'will be put on the table'. Once the manoeuvre not to have the debate succeeded, the Polish authorities did not (seriously) follow-up the proposals of the Venice Commission, as promised.

31. As concerns the repeated delays in the preparation of the Monitoring Committee's report, these were due principally to the 'regrettable' and 'unforeseen' circumstances relating to frequent changes in rapporteurs and the postponement, upon the request of the Polish authorities, of the report which, if published and debated in the Assembly just before the elections in Poland, could, so the Assembly accepted, lead to the report's instrumentalisation for domestic party-political interests.⁴⁰

32. Be that as it may, Poland is among the 11 states subject to the somewhat 'embarrassing' Assembly's full monitoring procedure – together with Russia and Turkey – and, as already indicated, the only EU member State subject to this control mechanism.⁴¹

The Strasbourg Court

33. The erosion of EU rule-of-law standards, primarily by the Polish executive and legislative bodies, and related issues with respect to violations of judicial independence, have been the subject of infringement proceedings before the Court of Justice of the EU for several years, as too, have requests for preliminary rulings.⁴² However, it has taken a long time to commence legal proceedings in similar cases before the Strasbourg Court. The explanation for this is (frustratingly) simple. The European Court of Human Rights can 'only' offer judicial protection in specific cases *ex post facto*, i.e. only after the (alleged) violation of the ECHR has already taken place. That said, in February 2021, the Court decided that all current and future applications concerning complaints on various aspects of the reform of the judicial system in Poland should be given 'Category I' priority, an assignment given to urgent cases in accordance with the Court's prioritisation policy, adopted in 2009.⁴³

34. An overview of rule-of-law applications pending in Strasbourg can be found in a publication issued by the Polish Helsinki

Foundation for Human Rights (HFHR), entitled: *Strasbourg. A New Destination on the Road towards the Rule of Law?*⁴⁴ At present, there are approximately 40 such individual applications pending before the Court. The following list of recently adjudicated cases and (admittedly, somewhat arbitrarily selected) applications illustrate the gravity of issues with which the Strasbourg Court is grappling:

- *Grzęda v Poland* (application no. 43572/18) – interruption of the term of office of a judge-member of the National Council of the Judiciary as a result of the ‘reform’ carried out in 2018 (lodged on 4 September 2018, relinquished by a Chamber in favour of the Grand Chamber in February 2021. Hearing held on 19 May 2021 with judgment due, probably, before the end of the year;
- *Xero Flor w Polsce Sp. z o.o. v. Poland* (application no. 4907/18) – Chamber judgment of 7 May 2021 finding a violation of Article 6 of the ECHR which guarantees the right to a fair trial. The irregular election of a duplicate-judge onto the Constitutional Tribunal, i.e. a judge appointed in December 2015 to an already filled judicial post, rendered the bench unlawful; it was not a “tribunal established by law”;
- *Broda and Bojara v Poland* (applications nos. 26691/18 and 27367/18) – Chamber judgment of 29 June 2021 finding that the removal by the Minister of Justice of vice-presidents of the Kielce Regional Court did not respect their right of access to a court, as guaranteed by Article 6 of the ECHR;
- *Reczkowicz and Others v. Poland* (applications nos. 43447/19, 49868/19, 57511/19) – Chamber judgment of 22 July 2021 finding a violation of Article 6 of the ECHR. The irregularity of the appointment process/inherently deficient procedure for judicial appointments to the newly created Disciplinary Chamber of the Supreme Court lacked the attributes of a “tribunal” which is “lawful” within the meaning of Article 6;
- *Żurek v Poland* (application no. 39650/18) – premature termination of judge’s mandate as a member of the National Council of the Judiciary, his dismissal as spokesperson for that organ, & alleged campaign to silence him (lodged on 6 August 2018, communicated on 14 May 2020);
- *Sobczyńska and Others v Poland* (applications nos. 62765/14, 62769/14, 62772/14 & 11708/18) – refusal by Polish Presidents Kaczyński & Duda to appoint applicants in 2008 & 2016 respectively to vacant judicial posts without providing reasons despite positive recommendations of the National Council of the Judiciary (lodged on 7 September 2014 and 28 February 2018, communicated on 14 May 2020)⁴⁵;
- *Tuleya v. Poland* (application no. 21181/19) – non-existence of effective remedies for a judge to contest breach of private life by targeted disciplinary proceedings, including his decision to request a preliminary ruling from the CJEU, and interference with the freedom of expression for critical comments made with respect to the new disciplinary regime for judges and legal ‘reforms’ put into place by the authorities (lodged on 10 April 2019, communicated on 1 September 2020);
- *Pajtk and Others v. Poland* (applications nos. 25226/18, 25805/18, 8378/19) – change in law with the effect of judges’ retiring earlier than expected and lack of judicial review of the relevant decisions (the first two lodged on 21 May 2018, the third on 30 January 2019, communicated on 7 September 2020);
- *Advance Pharma Sp. z o.o v. Poland* (application no. 1469/20) – judicial composition of the Civil Chamber of the Supreme Court, purportedly, not a court established by law due to basic flaws in the process of the judges’ appointment (lodged on 2 December 2019, communicated on 8 December 2020);
- *Tuleya v. Poland (no. 2)* (application no. 51751/20) – suspension of applicant of his duties as a judge and reduction of salary, and lifting of immunity for alleged offence of unauthorised disclosure of information from a criminal investigation by the Disciplinary Chamber of Supreme Court (itself – purportedly - established in flagrant breach of the law) (lodged on 24 November 2020, communicated on 16 July 2021).

NOTAS

1. This background note, prepared on 6 September 2021, is based on a much longer article, written in Polish, entitled 'Erozja praworządności i niezawisłości sądów w Polsce od 2015 r.: reakcja Rady Europy - za mało, za późno?' ['The erosion of the rule of law and of judicial independence in Poland since 2015: the Council of Europe's reaction - too little, too late?'] in *Wokół kryzysu praworządności, demokracji i praw człowieka. Księga jubileuszowa Profesora Mirosława Wyrzykowskiego [Around the crisis of the rule of law, democracy and human rights. Anniversary Edition in honour of Professor Mirosław Wyrzykowski]*, Wolters Kluwer, 2020, pp. 369-395.
2. These words are taken from the title of a presentation made at Oxford University, on 8 March 2018, by M. MATCZAK 'Poland: From paradigm to pariah? Polish constitutional crisis – Facts and interpretations' accessible at <https://www.fljs.org/content/poland-paradigm-pariah>.
3. See, A. BODNAR, *Wykonywanie orzeczeń Europejskiego Trybunału Praw Człowieka w Polsce. Wymiar instytucjonalny*, [Enforcement of Judgments of the European Court of Human Rights in Poland. The Institutional Dimension, with a summary in English], Warsaw 2018.
4. See A. DRZEMCZEWSKI 'The Role and Authority of the European Court of Human Rights,' *Arabic Review of International Humanitarian Law and Human Rights* 1 (2018), pp. 235–252, available at <https://aci.hl.org/review.htm>.
5. See *Resolution 2316* (2020) of the Parliamentary Assembly, adopted on 28 January 2020, based on the report of its Monitoring Committee, document 15025, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=28504&lang=EN> See also, in this connection, the European Parliament's report *Determination of a Clear Risk of a Serious Breach by Poland of the Rule of Law*, adopted on 17 September 2020, available at https://www.europarl.europa.eu/doceo/document/TA-9-2020-0225_EN.html and European Commission *2020 Rule of Law Report. The rule of law situation in the European Union*, of 30 September 2020, document COM (2020) 580 final and accompanying *Country Chapter on the situation in Poland (Country Chapter, Commission Staff Working Document)*, *passim*.
6. See <https://www.coe.int/en/web/secretary-general/home> Ms. M. Pejčinović Burić (Croat) is, since 18 September 2019, the Secretary General of the Council of Europe. She succeeded Mr. T. Jagland (Norwegian) who served in this post for two successive 5-year mandates since 2009.
7. The Committee's meetings are held *in camera*.
8. See the SG's portal: <https://rm.coe.int/zbigniew-moj-poland-30-06-21/1680a30491>
9. See <https://www.coe.int/en/web/commissioner> As of April 2018 the Human Rights Commissioner is Ms. *D. Mijatović* (Bosnian). *She is the fourth Commissioner, succeeding N. Muižnieks (2012–2018, Latvian)*.
10. See press release of 'visit report', 15 June 2016, <https://www.coe.int/en/web/commissioner/-/erosion-of-rule-of-law-threatens-human-rights-protection-in-poland> See also his letter to the Prime Minister, dated 6 February 2018.
11. *N. Muižnieks*, 'The Council of Europe's response to recent democratic backsliding', in P. CZECH, L. HESCHI, K. LUKAS, M. NOWAK & G. OBERLEITER (eds.), *European Yearbook on Human Rights 2019, 2020*, pp. 3–31.
12. See, for the complete text: <https://wyborcza.pl/7,75968,22111681,komisarz-praw-czlowieka-rady-europy-prawo-i-sprawiedliwosc.html>.
13. See, e.g., P. FILIPEK, 'The new National Council of the Judiciary and its impact on the Supreme Court in the light of the principles of judicial independence', vol. 16 *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego*, 2018, pp. 177-196.
14. See country visit report, available at: <https://www.coe.int/en/web/commissioner/-/poland-s-authorities-should-shield-judges-from-pressure-actively-protect-women-s-rights-and-step-up-policies-for-gender-equality>, esp. pp. 5–17 (with cross-reference to the report and the Polish authorities' response thereto); her Human Rights Comment, of 3 September 2019, 'The Independence of Judges and the Judiciary Under Threat', at: <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat> ; her *Annual Activity Report 2019, CommDH 7* (2020), p. 7, as well as her 4th Quarterly Activity Report 2020.

15. See <https://www.coe.int/en/web/commissioner/country-monitoring/poland> See also her letter of 9 January 2020 addressed to the Marshal of the Senate with respect to the (at the time draft) ‘Muzzle Law;’
16. See <https://www.coe.int/en/web/ccje/about-the-ccje> The CCJE must not be mistaken for the Brussels-based European Network of Councils for the Judiciary (ENCJ) which, in September 2018 suspended membership of the (new/pseudo) Polish National Council of the Judiciary, which is now in the process of being expelled from the ENCJ: <https://www.encj.eu/>.
17. See <https://www.coe.int/en/web/ccpe/home> The CCPE is not a key actor in respect of the ‘rule-of-law’ situation in Poland, but see its report for 2019, issued in March 2020: <https://rm.coe.int/ccpe-report-2019-en/16809e0d3a> (as concerns Poland see, in particular, §§ 75–84, 119–122, 154–157, 186 and 212–213).
18. See <https://rm.coe.int/ccje-report-2019-situation-of-judges-en/16809e0d05> As concerns Poland see, in particular, §§ 80–82, 125–143, 199–200, 289–295 & the Appendix, pp. 78–82 (comments by the Polish authorities). See also Report for 2017, issued in 2018, <https://rm.coe.int/2017-report-situation-of-judges-in-member-states/1680786ae1> §§ 134–165, 319–326 & the Polish authorities comments thereon, on pp. 74–76.
19. All these texts are available on the CCJE’s portal: <https://www.coe.int/en/web/ccje/status-and-situation-of-judges-in-member-states> (rubric ‘Poland’).
20. Adopted in March 2016: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e) (also in vol.37 *Human Rights Law Journal*, 2017, pp.184–198).
21. Adopted in March 2016, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)001-e).
22. Adopted in June 2016, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)012-e).
23. Adopted in October 2016, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)026-e).
24. Adopted in December 2016, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e).
25. Para. 129 of the *Opinion* adopted in December 2016, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)031-e).
26. *Provisional Opinion* (prepared in collaboration with the Council of Europe’s Directorate General on Human Rights and the Rule of Law) issued on 16 January 2020, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)002-e), with the definitive version being endorsed at the Commission’s plenary session on 18 June 2020, available on [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)017-e)
27. These two texts relating to Poland are now in force.
28. This *ad hoc* procedure has now been initiated with respect to four States. For more details see: <https://www.coe.int/en/web/greco/ad-hoc-procedure-rule-34->
29. *Ad hoc* (preliminary) *Report on Poland* (Rule 34) adopted on 23 March 2018, para. 1. Why puzzling? Simply because in a previous report (2009–2011) GRECO had come across very few, isolated examples of alleged corruption within the judiciary.
30. The GRECO reporting system is complex. The Addendum to the *Second Compliance Report* assessed the measures taken by the Polish authorities to implement recommendations issued in the Fourth Round Evaluation Report covering ‘corruption prevention in respect of MPs, judges and prosecutors’, as well as additional recommendations issued in 2018 in the Addendum to the *Fourth Round Report on Poland* (Rule 34).
31. Available at: https://www.coe.int/en/web/greco/-/poland-letter-to-the-minister-of-justice#59959762_22390111_True.
32. See ‘Information note’ issued by the then co-rapporteurs of the Committee on their fact-finding visit to Warsaw (3–5 April 2017), document AS/Mon (2017) 14, of 9 May 2017 (in particular para. 3 thereof!): <http://www.assembly.coe.int/LifeRay/MON/Pdf/DocsAndDecs/2017/AS-MON-2017-14-EN.pdf>
33. Resolution 2316 (2020) of 28 January 2020 (cit. n. 4). For an overview of the Monitoring Committee’s work, consult document AS/Mon/Inf (2021) 11 *Monitoring Committee: Work Overview*, of 16 June 2021: <https://assembly.coe.int/LifeRay/MON/Pdf/DocsAndDecs/OverviewMON-EN.pdf>.

