

Tomasz Pietryga: A judicial recipe for disaster

There will be no pinpointed liquidation of the Disciplinary Chamber, but a reset of the Supreme Court, and perhaps the whole of the judiciary.

Published on: 02/11/2021 18:55 | Tomasz Pietryga (commentary)

This is the conclusion that can be drawn from the concept of the government's reform, to which 'Rzeczpospolita' has obtained access. The change is radical; it can be compared to that which was pushed through in 2017, which was vetoed by President Duda. Then, it boiled down to the verification of all judges of the Supreme Court and aroused widespread objection.

Only that several years ago, while forcing through the reform of the Supreme Court, PiS brought about the establishment of the largest court of this kind in the world in terms of the number of judges. Now, it probably intends to create a pocket-sized version of it. The draft also encourages longer-serving judges to retire voluntarily. The alternative is 'demotion' to a court of appeal (although elsewhere, the draft abolishes these and replaces them with provincial courts) or a further review by the National Council of the Judiciary. First passes have already been made, but did not withstand the criticism.

This is a devilish alternative for the so-called old judges of the Supreme Court. It gives them the choice of continuing their careers in the Supreme Court if they take the risk in advance and pass the evaluation before the NCJ, the legality of which they are questioning. It is known that only a few can take such a step. This is unacceptable for the majority. And this is what the authors of the idea are counting on.

The concept of assessment is provocative. It is difficult to describe the appointment of the NCJ, the legality of which, in its current form, is being questioned by the majority of the community and the status of which is being undermined by CJEU rulings, in any other way. If PiS submits the draft for legislative work, this will be a sign that it completely disregards the reality of the conflict – in Poland and with the EU institutions. It is a clear message: your threats, protests, positions and judgments are completely insignificant. However, this is a way of escalating the conflict, provoking judicial disobedience and further rulings of the CJEU. Certainly unfavourable ones.

However, there may be other changes in the storm that has broken out. The draft destroys not only the model of the Supreme Court model that was established in the inter-War period, but also the structure of the ordinary judiciary. The liquidation of the district courts, the establishment of provincial courts, and the uniform status of judges will not only mean a change of plaques and seals, but also personnel and organisational perturbations. Even in times of political peace, the risks of such a reform would be enormous. At a time of conflict between the judiciary and the legislative and executive authorities, it is a simple recipe for disaster that will strike at the citizens.

Different concepts are clashing within the ruling camp. Prime Minister Morawiecki's entourage promoting the idea of the targeted removal of the focus of the conflict with Brussels without affecting the whole of the judiciary seems to be remaining on the defensive. This is suggested by the statements made by Jarosław Kaczyński and Ryszard Terlecki, who talk about the need for a comprehensive reform. The question is whether PiS will choose the offensive variant promoted by Minister Ziobro or stop in its ambitions with a half measure.

Emotions are strong within the right wing, as is the desire to retaliate for the fines and the freezing of the advances from the National Reconstruction Plan, as well as to crack down on judges questioning the constitutional order after the judgment of the Constitutional Tribunal. And this favours Zbigniew Ziobro. In accordance with the principle: when you are dealt a blow, react twice as hard, do not look for a compromise.

<https://www.rp.pl/opinie-prawne/art19070051-tomasz-pietryga-sadowy-przepis-na-katastrofe>