

# Europe, defend Poland's Supreme Court!

## *An open letter to the European Commission*

We, representatives of pro-democracy Polish civic organizations abroad, urge the European Commission to take immediate steps to prevent Poland from implementing a law that would erode the independence of Poland's judiciary even further.

In the wake of its electoral victory in the fall of 2015, the Law and Justice party has engaged in systematic subjugation of the judiciary to the executive branch of government, and it has politicized the justice system. In response, on numerous occasions, the European Commission has criticized a series of changes in laws governing Poland's Constitutional Tribunal, ordinary courts, the National Council of the Judiciary, and the Supreme Court - changes deemed as unconstitutional and violating the fundamental principles of the separation of powers.

We appreciate and support the Commission's efforts meant to defend and restore the rule of law in Poland. However, sadly, we see that so far these efforts have been to no avail: the Polish government has consistently ignored all recommendations and has not undertaken any actions that the Commission had called for pursuant to Article 7 of the Treaty on European Union.

The process of destruction of the independent judiciary in Poland is soon to be completed. On 3 July, nearly 40 percent of current Supreme Court judges might be forced into early retirement pursuant to the Supreme Court Act, deemed unconstitutional. They will then be replaced by nominees of the already politicized National Judiciary Council, which is fully controlled by the executive branch of the government. This will constitute the final act of the governing party's takeover of the courts.

The European Commission can prevent this scenario from unfolding - a scenario which, if it does take place, will have far reaching negative consequences not only for Poland, but also for the entire European Union. It is possible and imperative to take measures other than those outlined in Article 7 of the Treaty on European Union.

We appeal to the European Commission to immediately refer Poland's Supreme Court Act to the Court of Justice of the European Union, under Article 258 of the Treaty on the Functioning of the European Union, and to file a motion for interim measures. Articles 37 and 111 of Poland's Supreme Court Act infringe upon the principle on irremovability of judges, which is a key element of the independence of the judiciary; thus, these two articles are in conflict with Article 2 and Article 19 (section 1, third sentence) of the Treaty on European Union and Article 47 (second paragraph) of the EU Charter on Fundamental Rights.

In recent past, an application of similar legal measures effectively stopped the Polish government from continuing its destruction of the Białowieża Forest, a treasure of Europe's natural environment. Furthermore, we expect that the European Commission shall continue to support the complaint submitted to the Court of Justice of the European Union in March 2018 on the matter of changes to Poland's law on ordinary courts. The Court's ruling will have to be respected by all parties to the dispute in Poland - including the opposition.

A ruling of the Court of Justice of the European Union will be critically important for the future of the Polish constitution and the rule of law in Poland. With the destruction of Poland's Constitutional Tribunal already completed and the expected abolition of the the Polish Supreme Court's independence, there will not be a single institution left in Poland with the power to declare that these laws, which severely undermined Poland's political system, are invalid. In this predicament, relevant rulings of the Court of Justice of the European Union could serve as the only source of law on the basis of which it might be possible to eliminate the consequences of the present lawlessness.

An overwhelming majority of Polish citizens support Poland's European integration. As citizens of the European Union, we consider the European Commission and the Court of Justice of the European Union to be also our institutions. A European Union based on the rule of law and civil liberties is our shared good. We cannot allow these values to be lost.