

IT STARTS WITH THE PERSONNEL

Replacement of common court presidents
and vice presidents from August 2017 to February 2018



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Table of contents

I. Introduction	5
2. Terms used in this report.....	6
3. Reform of the justice system	7
Changes in the rules for appointing and dismissing court presidents	8
Freedom in dismissing common court presidents and vice presidents	8
New rules for judges' promotions.....	8
Change in judges' retirement age	9
The entrance into force of the Law on the System of Common Courts	9
4. Research methodology	9
5. The judges' work through July 2017	10
Insufficient number of judges.....	10
Unreasonable delays in proceedings	13
Relationships with court directors	13
Relationship with the Ministry of Justice	13
6. The process of dismissing court presidents and vice presidents.....	15
Before the dismissal of presidents and vice presidents	15
Dismissal of presidents and vice presidents.....	16
7. New court management.....	19
The new court presidents	20
Changes introduced in the courts.....	21
Forms of exerting influence on judges	22
8. Judges' reaction to the changes	22
9. Evaluation of the changes introduced by the amendment to the Law on the System of Common Courts.....	23
The amendment and the position of court presidents	24
The amendment to the Law on the System of Common Courts and judicial independence.....	24
The amendments and court operations	25
The Common Court System Law Amendments and the right to a fair trial	26
10. Conclusions and recommendations	27
II. Attachment No. I: Interview questionnaire	29

***This isn't a scandal, it's management.
There's no democracy in management; there's only one manager***

Deputy Justice Minister Łukasz Piebiak, speaking in parliament on 12 July 2017

***Please show me, how have these changes affected anything?
And in terms of personnel – let them show us just one thing they've done
since they took power that would make the courts function better.***

A dismissed court president

***It starts with the personnel [...] if the Minister believes
that the only way to improve the situation in the judiciary
is to change the people, I congratulate him.***

A dismissed court president

I. Introduction

In 2017 the Ministry of Justice announced a plan to reform the justice system. The July 2017 amendments to the Law on the System of Common Courts, presented as part of this plan, provoked various concerns in the legal community, and prompted mass public protests. One of the most controversial regulations of the new act was the assignment to the Ministry of Justice of the right to dismiss court presidents and vice presidents during the first half-year after it took effect.

For almost 30 years, the Helsinki Foundation for Human Rights (HFHR) has been monitoring the observance of the right to a fair trial and the guarantee of access to the justice system. The controversies surrounding the amendments to the Law on the System of Common Courts prompted us to take a close look at the introduction of the new regulations.

This report focuses primarily on the process of dismissing and appointing new presidents and vice presidents of common courts in the period from August 2017 until February 2018. It was created on the basis of information collected during 20 individual interviews with judges dismissed by the Minister of Justice from their positions as presidents and vice presidents; analysis of the sources of law; and press releases as well as information obtained from the Ministry of Justice in the procedure of access to public information.

In presenting this report to you, we wish to thank all those who contributed to its creation, including employees and partner of the HFHR, representatives of judges' associations, lawyers and NGO activists who provided us with information on the dismissed presidents and vice presidents. We are also thankful to everyone who commented the first draft of the report. We would like to present our particular thanks to the reviewers of the report, Piotr Kładoczny, PhD, Prof. Krystian Markiewicz, PhD, Hab., and Maciej Nowicki. Nevertheless, we are responsible for any errors or imprecision.

But most of all we would like to thank our interviewees for the trust they have shown us and the time they have dedicated to this project. Many of the people we spoke with pointed out that the process of dismissing them from their positions was one of the most difficult moments in their careers. Some of the people we spoke with initially were not inclined to share their observations with us, out of fear that this could be interpreted improperly by the public as seeking to draw attention to their cases. It was only the form of the research, in which the confidentiality of the information shared comes first, that persuaded them to speak with us. Among the people we spoke with there were also people who explained their participation in the research by saying that *"a time has come when we can no longer be silent."*

Barbara Grabowska-Moroz, PhD
Małgorzata Szuleka

2. Terms used in this report

The amendment to the Law on the System of Common Courts (the court system amendment): the Act adopted by the Sejm, the lower house of Poland's parliament, in July 2017 amending the Law on the System of Common Courts and certain other acts (Journal of Laws Dz. U. 2017 position 1452). Changes introduced by the act include a new method for appointing and dismissing court presidents and vice presidents, a new retirement age for judges and new rules for promotion. The act, along with legislation being worked on simultaneously to amend the act on the National Judiciary Council (NJC) and the Supreme Court, drew opposition from numerous groups of judges, and mass public protests. On 24 July 2017 President Andrzej Duda decided to veto the laws on the Judiciary Council and the Supreme Court, and to sign the court system amendment. The act took effect on 12 August 2017.

Court president – manages the court and represents it in external matters (with the exception of matters within the authority of the court director). The president is the supervisor of a court's employees including judges, court assessors, magistrate judges and judges' assistants. The president also analyses decisions in their court with respect to uniformity, and informs the judges and court assessors of the results of such analysis, and if significant discrepancies are confirmed, they inform the First President of the Supreme Court. As part of the supervision process, the president monitors factors including the efficiency of proceedings in particular cases.

Court vice president – substitutes for the president in the performance of their duties, and also performs duties assigned by the president. The number of vice presidents in appeals courts and regional courts is set by the Minister of Justice, while the number of vice presidents in district courts is determined by the president of the appeals court, after receiving an opinion from the president of the district court.

Court director – oversees the administrative functions of the court, including by ensuring the courts have the structure and facilities they need to function. After changes introduced in March 2017, the direct supervisor of the court directors is the Minister of Justice.

Appointment of new court presidents and vice presidents – the court system amendment changed the method for appointing court presidents and vice presidents. Until July 2017, the presidents of appeals courts and regional courts were appointed by the Minister of Justice after receiving an opinion from the general assembly of appellate or regional judges. The president of the district court, in turn, was appointed by the president of the appeals court upon receiving an opinion from the assembly of a given district court's justices. If the opinion was negative, the Minister of Justice could appoint the court president after receiving a positive opinion from the NJC. A negative NJC opinion was binding on the Minister. The court system amendment removed the requirement to receive an opinion from the assemblies, leaving the exclusive right to appoint court presidents and vice presidents in the hands of the Minister of Justice.

Dismissal of new court presidents and vice presidents – the court system amendment introduced two methods for dismissing court presidents and vice presidents. During a transition period, from August 2017 until February 2018, they were dismissed on the basis of decisions at the discretion of the Minister of Justice.

Beginning in February 2018, in accordance with the second method, the procedure for dismissing court presidents calls for a certain element of consultation. Under the previous method (until July 2017), the Minister of Justice could dismiss the presidents and vice presidents of appeals courts and regional courts during their terms in the case of gross negligence in the performance of their duties, or if for other reasons, the interests of the justice system made it impossible for them to remain in office. The court system amendment of July 2017 broadened the competences of the Minister of Justice to include presidents of district courts, and added another cause: a finding of particularly low effectiveness in the performance of administrative supervision. Presidents can be dismissed after an opinion is received from the NJC, while before 2017 a negative opinion from the NJC was binding on the Minister of Justice.

At the beginning of April 2018 the Sejm further amended the Law on the Common Court System in the area of dismissal of court presidents, introducing a requirement to consult with the collegium of the court in the dismissal of court presidents and vice presidents during their terms.

Delegation of judges – the Minister of Justice may delegate judges, with their consent, to perform judicial duties, for instance in another court of the same instance, and in particularly justified cases, in a higher court, taking into consideration the rational use of common courts' human resources. As the National Judiciary Council indicated,

the practice of delegating judges from lower courts to perform the duties of judges in courts of higher instance has become widespread, as an informal method of making up for shortages of full-time positions.¹

3. Reform of the justice system

In January 2017 the Ministry of Justice announced its intention to carry out a reform of the justice system.² The statement posted on the Ministry's website included more than 10 wide-ranging points, both organisational³ and legislative,⁴ for example a system of assigning cases to judges at random. The ideas had not been consulted with the public, nor were they supported by draft bills.

The idea most commonly cited in the media was the appointment of so-called justices of the peace, authorised to settle minor matters, "if parliament agrees to change the Constitution". At the same time, it was pointed out that another result of introducing such a change should be "a flattening of the structure of the common courts to two instances."

Before the first bills drafted on the basis of the announced goals saw the light of day, in December 2016 the Council of Ministers sent to the Sejm a draft amendment to the Law on the System of Common Courts.⁵ The purpose was to change the division of competences between court presidents and directors. But coincidentally, the amendment fully subjected the directors to the Minister of Justice: the requirement to hold recruitment concours for open positions was removed, while dismissal from the position did not require any justification. The introduction of total freedom for the Minister of Justice in staffing the justice system was supposed to be driven by the fact that "the regulations thus far have not in every case allowed the proper reaction from the Minister of Justice in the area of personnel management." In the justification of the bill it was also argued that the draft regulations would deliver benefits: "they will reduce the scope of court presidents' duties in the area of internal administrative supervision." The bill was passed in March and took effect on 4 May 2017.⁶

One of the planned goals of the reform of the justice system was a so-called democratization of the method of appointing the National Judiciary Council, which was supposed to make it "free from the corporate interests of the judicial community." One of the problems diagnosed by the Ministry was the fact that "the choice of Council members was in practice determined by the judicial elite." Additionally, then, "objectivity in selection and the independence of members of the National Judiciary Council from corporate interests is to be ensured by their selection by the Sejm, whose mandate comes from democratic elections." The government bill amending the law on the National Judiciary Council was sent to the Sejm in March 2017.⁷

In March 2017, a bill on the rules for appointing assessors was also sent to the Sejm.⁸ The bill was passed in May 2017 and broadened the powers of the Minister of Justice in the area of appointing assessors.

Simultaneously, a group of MPs announced a separate bill to amend the Law on the System of Common Courts⁹. As was indicated in a brief statement on the bill on the Sejm's website, it aimed at "increasing the influence of the

1 See the Position of the National Judiciary Council of 20 November 2003 on the rules for delegating judges to perform the duties of a judge in a court of a higher instance (art. 77 of the act on common courts).

2 Framework of the planned judiciary reform: <https://www.ms.gov.pl/pl/informacje/news,8989,zalozenia-planowanej-reformy-sadownictwa.html>.

3 Including combining the smallest court departments, and along with them the positions of department heads and their deputies, burdened with unnecessary administrative duties; curtailing the number of inspector judges who work exclusively on court inspections and redirecting them into trial duties; introducing an electronic system of recording judges' work, which will limit bureaucracy and simultaneously allow a balanced distribution of the work of judges throughout the country.

4 Including introducing the principle of continuity in the panel of judges on a case, introducing financial sanctions for conscious and deliberate delaying of a trial by the parties; supporting court-supervised settlement agreements; increasing the authority of professional court-appointed administrators and de-bureaucratizing their work; streamlining the system of court directors' work.

5 Druk sejmowy No. 1181.

6 The direction of changes arising from the act of 23 March 2017 completely avoids the Constitutional Tribunal decision of 7 November 2013 (Ref. K 31/12), which held that certain regulations concerning the status of court directors are unconstitutional. The Tribunal ruled that article 32b § 3 of the Law on the Common Court System, in the area in which it did not describe the effects of a request from a court president to the Minister of justice to dismiss a court director, was not in accordance with article 10 paragraph 1 and article 173 of the Constitution. The Tribunal pointed to the basis for the current state of law, that "if actions or omissions by a court director had a negative effect on the functioning of the court and as a result significantly hindered the accomplishment of its tasks in the area of the justice system and legal protection, the organs of the judiciary authorities would not have an effective means of counteracting such a state of affairs." Such a state of affairs also exists on the basis of the act of 23 March 2017.

7 Druk sejmowy No. 1423.

8 The government bill on amending the act on the National School of Judiciary and Public Prosecution – Law on the System of Common Courts and Certain Other Acts, druk sejmowy No. 1406.

9 Druk sejmowy No. 1491.

Ministry of Justice on appointments.” Even though formally the bill was submitted by a group of MPs, both the way the legislative process was conducted and the similarity between the planned changes and the principles of justice system reform (e.g. the random assignment of cases) indicate that the bill may have been drafted in the Ministry of Justice. The submission of the bill by a group of MPs meant that it did not have to be submitted to public consultation. The third reading of the bill coincided with the passage of the laws on the Supreme Court and the National Judiciary Council, as well as with the public protests they prompted. But unlike those two acts, the amendment to the Law on the System of Common Courts was signed by the president and took effect on 12 August 2017.¹⁰

The act of 12 July 2017 is broad and regulates various aspects of the relationship between common courts and the Minister of Justice. In addition to amending the Law on the System of Common Courts, the act also amends the Law on the prosecutor, the Code of Criminal Procedure and the Executive Criminal Code (in the area of how the Victims’ Assistance Fund and Post-Incarceration Assistance operate¹¹).

Changes in the rules for appointing and dismissing court presidents

The new regulations aimed to increase the justice Minister’s freedom in taking personnel decisions in the courts. This was justified by the argument that the Minister performs the function of “ensuring the proper functioning of the common courts in the administrative dimension.” The appointment of presidents does not currently require the consent of the judges of the court in question; the new president is simply presented to them. In the case of dismissals, as well, the consent of the judges is not required, only an opinion from the National Judiciary Council – as long as the resolution is passed with a two-thirds majority. Simultaneously, the list of causes for dismissing a president was expanded.

Freedom in dismissing common court presidents and vice presidents

The personnel changes called for in the transitional regulations come in two stages. The first involves granting new competences in the area of personnel to the Minister of Justice – the right to change all presidents and vice presidents of common courts in Poland during the first six months the act is in effect, i.e. until 12 February 2018. The dismissal of presidents and vice presidents would not be backed by any procedural requirements (the need to obtain any opinions). The second stage of personnel changes in the courts is related to the competence of court presidents to perform reviews of various positions – department heads and their deputies, section managers and inspectors, and to dismiss judges from their positions.

In its opinion on the amendments to the Law on the System of Common Courts, the Venice Commission stated that the justice Minister’s participation in appointing court presidents is a solution not found anywhere else in Europe. Additionally, the Venice Commission believes the justice Minister’s participation in the process of dismissing presidents is even more problematic. The Commission said that the Minister of Justice should not take decisions in this area on their own, and judges should participate in the entire process, either directly or through their representatives.¹²

New rules for judges’ promotions

The amendments introduced new rules for promotions to higher judicial positions, including appeals court judge. In the light of the new regulations, a judge (e.g. a district court judge) who has at least 10 years of experience as a judge or prosecutor can be appointed as an appeals court judge. Similarly, a prosecutor with 10 years in their position can also become an appeals court judge. This means that prosecutors who are currently subject to the prosecutor general can in a short time become judges of one of the highest levels of courts in Poland, and have direct influence on jurisprudence.

10 The Act dated 12 July 2017 amending the Law on the System of Common Courts and Certain Other Laws (Dz. U. 2017 position 1452).

11 The Fund changed its name to “the Justice Fund”, and in January 2018 the Minister transferred PLN 100 million for purposes including the operations of the volunteer fire brigade, which formally is not even subject to the Ministry of Justice: <https://www.ms.gov.pl/pl/informacje/news,10358,ponad-100-mln-zl-z-funduszu-sprawiedliwosci-na.html>.

12 Venice Commission, Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017), [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)031-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)031-e)

Change in judges' retirement age

The act also reduced the retirement age for judges (to 65 from 67), and differentiated it for women and men. Women aged 60 may apply to the Minister of Justice for permission to continue serving as judges. Thus the Minister was given authority that did not exist on the basis of the previous regulations. Additionally, the Minister is not bound by any criteria in making decisions in this area, and the decisions are not subject to review by administrative courts. This allows the Minister of Justice to take arbitrary decisions on which judge will be allowed to continue serving. At the end of March 2018 the Ministry of Justice announced that judges may file declarations that they will retire based on the previous rules, meaning that they may continue serving until age 65. But this applies only to judges who as of 1 October 2017 had reached the age of 60, or would reach it by 31 March 2018. Judges were allowed to file declarations through 31 March 2018.¹³

The remaining changes introduced by the amendment to the Law on the System of Common Courts were the introduction of coordinators for international affairs, the requirement for the Minister of Justice to issue opinions on candidates for inspector, the requirement for district courts to file annual reports, the possibility of delegating judges to the Ministry of Foreign Affairs and the Presidential Administration and powers for the Ministry of Justice in the area of authors' rights to the judiciary's information systems.

The entrance into force of the Law on the System of Common Courts

On 27 July 2017, despite mass public protests and numerous calls for a veto of the three laws restructuring the justice system, President Andrzej Duda decided to sign the amendment to the Law on the System of Common Courts. The amendments took effect on 12 August 2017.

In December 2017 the European Commission issued its fourth recommendation on the rule of law in Poland. The EC's recommendations for the Polish authorities included "Amend or withdraw the law on Ordinary Courts Organisation, in particular to remove the new retirement regime for judges including the discretionary powers of the Minister of Justice to prolong the mandate of judges and to appoint and dismiss presidents of courts." The European Commission also took a decision to refer Poland to the Court of Justice of the European Union for violating EU law as a result of the adoption of the amendment of the Law on the System of Common Courts, in particular the regulations governing the retirement age.¹⁴

4. Research methodology

Note:

To protect our interviewees, the authors of the report decided not to provide data that would allow participants in the research to be identified, so the description of the group of respondents was limited to general information; contextual information that could assist in the identification of the speakers or their courts has been removed from the comments cited in the report.

As part of the research, 20 individual interviews were conducted with 14 common court presidents and six vice presidents who were dismissed by the Minister of Justice under article 17 of the 12 July 2017 amendment to the Law on the System of Common Courts. The interviews were conducted from the end of December 2017 through mid-March 2018, using a standardised questionnaire (Appendix No. 1 to this report).¹⁵

Interviewees were chosen based on an analysis of news reports and the "snowball method" (participants in the research told other individuals who might be interested in participating). Although during the interview no questions were asked about the interviewees' motivations for participating in the research, several of them stressed that their main motivation was to share information about the effects on the work and organisation of courts, and of judicial independence, of the amendment to the Law on the System of Common Courts. Some of the

¹³ Anna Gmiterek-Zabłocka, "Nie mogą pracować czy mogą? Jak resort Ziobry, co kilka godzin, zmienia zdanie ws. kobiet-sędziów" (Can they work, or not? How Ziobro's Ministry changes its opinion on women judges every few hours), Tok.fm, <http://www.tokfm.pl/Tokfm/7,103454,23208828,moga-pracowac-czy-nie-moga-resort-ziobry-co-kilka-godzin.html>

¹⁴ European Commission, "Rule of Law: European Commission acts to defend judicial independence in Poland", http://europa.eu/rapid/press-release_IP-17-5367_en.htm

¹⁵ Additionally, information received via public records requests, and publicly available information (Internet, media) was used in preparing the report.

interviewees had earlier been asked by journalists for interviews on the subject of their dismissal, but declined out of fear that they would be suspected of seeking publicity for their cases. The conditions proposed in the research (confidentiality of the information provided, and methodological rigor) were decisive in the interviewees' consent to participate in the project. In at least four cases, the interviewees agreed to take part only a few weeks after they were contacted; in these cases, the main motivation was to share information about the effects of the change in management.

The interviews were conducted in 14 cities throughout Poland.

The average time interviewees had served as judges was 20 years. The clear majority (18), before being appointed as court presidents or vice presidents, had served in other roles: president of a lower court, court vice president or at least department head. All of the interviewees worked earlier in the courts in which they later served as presidents and vice presidents.

The courts in which the interviewees served varied widely in terms of the number of departments and of judges employed in them – ranging from small courts with four to six departments and at most 30 judge positions, through medium-sized and large courts, with seven and more departments, and more than 50 judges. The interviewees' courts, depending on their size and local characteristics, heard from several thousand to several hundred thousand cases annually. In the case of at least half the interviewees, cases were heard that drew particular interest from media and local politicians.

The interviewees were dismissed from the positions of court president or vice president at various points in their terms. Half of them were dismissed a year or less before the end of their terms; an additional six were dismissed about two years before the end of their terms (which in the case of district court presidents means in the middle of the terms, and in the case of regional and appeals courts, two-thirds of the way through the term). In the last four cases, the interviewees were dismissed three or four years before the conclusion of their terms.

5. The judges' work through July 2017

The first part of each interview concentrated primarily on establishing the most important problems in the functioning of the courts before July 2017 in the courts managed by the interviewees. Among the most important problems related to the courts' operations, the interviewees pointed primarily to a shortage of administrative workers (assistants, court officials) and trial judges. Further areas in which problems occurred or could occur were issues related to undue delays of proceedings and cooperation with the Ministry of Justice.

Insufficient number of judges

In almost every interview, the interviewees pointed to the question of insufficient staffing as one of the most important problems in the courts' operation. In this respect, they pointed to four main questions: the so-called freeze on judicial positions, the new rules on the retirement age, problems with the organisation of delegation of judges and delegation of judges to the Ministry of Justice.

The problem of vacant judicial positions and the failure to fill judicial and magistrate positions was a subject that arose in each of the interviews. Most interviewees believe that it was precisely the constantly growing number of vacant positions, combined with the lack of any reaction from the Ministry of Justice, that significantly slowed the work of the courts, and in the worst cases actually led to the collapse of the work of certain departments in particular courts.

According to article 22a of the Law on the System of Common Courts, added in 2015, the president of an appeals court shall inform the Minister of Justice within 14 days of any judicial vacancies that arise in the appeals court's geographical area. The Minister, taking into account factors including the burden on particular courts, shall assign the position to a judge, and shall place in the Monitor of Poland a notice of open judicial positions. This regulation took effect at the beginning of January 2016, while according to the interviewees, beginning more or less in the middle of 2016 the Ministry stopped placing the notices of open judicial positions, leading to a de facto freeze. Already in autumn 2016, the National Judiciary Council pointed out this problem, indicating that "the current practice of the Ministry of Justice concerning notices of open judicial positions is contrary to the basic principles of the system and violates the terms of the legislation."¹⁶

¹⁶ Position of the National Judiciary Council issued 14 October on delays in posting notices in the Dziennik Urzędowy Rzeczypospolitej Polskiej "Monitor Polski" of open judicial positions in common courts, <http://krs.gov.pl/pl/dzialalnosc/opinie-i-stanowiska/f,182,opinie->

Neither the National Judiciary Council's request nor the systematic reminders from court presidents about filling the vacancies brought any reaction from the ministry. All of the interviewees who corresponded with the Ministry on this matter pointed to the lack of any binding determinations by the ministry, or unambiguous information.

"Every time I asked about positions for judges, inspectors and assistants, I got the enigmatic sentence, which doesn't tell anybody anything, i.e. 'the request is being processed.'"

"We constantly heard that the notices would be started by the middle of the year, or the end of the year. For the Ministry it was also clear that having so many vacancies isn't a healthy situation."

Ministry of Justice data indicate that the number of vacant judicial positions grew consistently in 2017. In June 2017, there were 697 vacancies in courts (67 in the appellate courts, 250 in regional courts and 380 in the district courts). In December 2017, the number of vacancies slightly dropped - in appellate courts were 82 vacancies, 298 in district courts and 101 in regional courts - altogether 481 vacancies.¹⁷

In almost every court where interviewees worked, judicial positions were not fully staffed; the average vacancy rate ranged from 8% to 25%.

"We never had the full complement of judges. Never."

"We were constantly short of about a dozen judges, and here I'm thinking both of vacancies of and delegations to courts and the ministry."

Until June 2017, the growth in the number of vacancies was caused by factors including failure to fill the positions of retiring judges. In at least three courts where interviewees worked, more than the expected number of judges retired during interviewees' terms as court presidents and vice presidents. This situation was particularly worrying in the case of regional and appeals courts: interviewees who served as presidents and vice presidents in these courts indicated that an unexpectedly high number of judges in their courts decided to retire over the past two years.

In some cases, the situation was exacerbated by the regulations on the new retirement age for judges, leaving to the Minister of Justice the decision on whether judges who had reached the retirement age could continue serving. Information provided by the Ministry indicates that from 12 August 2017 to 28 February 2018 a total of 219 judges filed requests to be allowed to continue serving. The Minister of Justice reviewed 130 requests and granted consent to 69 of them.¹⁸ Two interviewees were from courts where judges had filed such requests. In one case, at the time the interview was conducted the request had not yet been reviewed yet, while in the second, two requests were resolved completely differently. According to the interviewee from the second court, there is no objective criterion that guides the Minister in taking decisions on these requests. Additionally, another two interviewees who are to reach the retirement age soon doubt that they'll receive the Minister's approval.

"Now the first women will be filing requests to the ministry, and they're very afraid of what will happen - over a very short time, three departments can lose five judges, who will be replaced by judges from lower courts. After all, the amendment says a district court judge with 10 years of service can even go to an appeals court. And once they choose their NJC, you'll see who'll be making the rulings. Unfortunately the quality of decisions will fall steeply."

In many cases the failure to fill positions didn't apply to just one court, but was a systemic problem for the entire region or appellate area.

"In total, in all of our district courts in 2017 there was a shortage of 20 judges - it's as if a whole court had been taken away."

At the same time, one interviewee indicated that from mid-2016 to the end of 2017, the Ministry did not take any actions to fill vacancies, and did not present any rational justification for this. The clear majority of requests that the interviewees sent to the Ministry for vacancies to be filled, or for courts to be assigned more positions, either remained unanswered or were rejected without explanation.

i-stanowiska-2016-r/614,10-13-pazdziernika-2016-roku/4444,stanowisko-krajowej-rady-sadownictwa-z-dnia-14-pazdziernika-2016-r-nr-wo-401-2816-dot-wo-0752-8316

17 Information provided by the Ministry of Justice via a public records request.

18 Information provided by the Ministry of Justice via a public records request.

“Sometimes the letters about judicial vacancies went out every month; some the Ministry didn’t reply to, sometimes they denied them in bulk, without giving a reason.”

“We have a problem with keeping judicial positions – we write requests and justifications of why the position should remain with the court, but the Ministry has its own calculations, and at meetings they say not to drown them in statistics, because they have their own calculations, and we can provide other reasons for why a given position should remain with the court.”

This kind of situation affected not only the work of the court where it happened, but also higher courts, whose presidents had limited abilities to use temporary delegations for vacant positions. According to interviewees who were presidents of regional or appeals courts, using the ability to delegate from a lower court would be irrational both from the point of view of managing the court itself and from that of supervising the courts under its authority.

“My sense of responsibility dictates that you can’t just delegate people to a court as long as the lower courts have unfilled vacancies. Every delegation to a court would mean that another court would lose a trial judge.”

In terms of the organisation of delegations to higher courts, the interviewees pointed to a change in practice in this area that occurred recently. According to article 77 § 1 point 1 of the Law on the System of Common Courts, the Minister of Justice may delegate a judge, with their consent and in particularly justified cases, to a higher court, also taking into account rational usage of common court personnel and the needs arising from the workloads of particular courts. In courts managed by our interviewees, the procedure for delegating judges was one of the main ways to fill vacant positions: Even though judicial positions were not formally filled, the delegated judges significantly reduced the burden on other judges.

Still, in our conversations the interviewees pointed out that in a period of almost a year before the interviews, this possibility was also been significantly restricted. In April 2017 the Ministry of Justice called on court presidents to clarify in practice the method of choosing candidates for delegated judges. The Ministry obliged court presidents who requested delegation of judges to present the applications of all candidates and to conduct a procedure of candidate review, connected with an analysis of the situation of the department to which the judge was to be delegated.¹⁹

The interviewees who sought delegations to their courts were unanimously critical in their evaluation of this solution. In principle, the new procedure was to guarantee transparency of the process of organising delegations, but in practice it prolonged the procedure unwisely, and additionally had no foundation in the current regulations (one of the interviewees described it as a non-statutory procedure).

According to our interviewees, even conducting the delegation procedure in the way established by the Ministry was no guarantee of success. The Ministry most often denied consent to delegation of judges, leaving the decision without any justification – contrary to the initial goal of increasing transparency.

“A one-sentence letter arrived: ‘No!’ It was unknown whether it was ‘no, because not this candidate’ or ‘no, just because’. And unfortunately it was impossible to find out what the reasons for the denial were.”

The information provided by our interviewees indicates that the procedures for organising the delegation of judges were used by the Ministry of Justice largely as a means to an end, not always in a way that took the best interests of the court into account. In one case, the Ministry declined consent for delegation of a judge to an interviewee’s court, after which, once the interviewee was dismissed, it agreed to the delegation of the same candidate. In another case, the Ministry did not consent to delegate judges from courts under its supervision to the interviewee’s court. In this case, the delegated judges were not appointed to the position of delegated judges according to the concurrence procedure called for by the ministry.

Another factor that influenced the reduction in the number of trial judges in the interviewees’ courts was the delegation of judges to the Ministry of Justice. In almost half of the recent cases, at least one judge was delegated to the Ministry (during the time the interviewees were in the position of president or vice president). In such a situation, one of the judicial positions is blocked: the position is counted in the total pool of all positions in the court, while it is not a trial judge position.

¹⁹ Agata Łukaszewicz, “Ministerstwo Sprawiedliwości: Każdy sędzia ma mieć równe szanse na delegację” (Ministry of Justice: Every judge is to have equal chances at delegation), Rzeczpospolita, 18 April 2017 r., <http://www.rp.pl/Sedziowie-i-sady/304189907-Ministerstwo-Sprawiedliwosci-Kazdy-sedzia-ma-miec-rowne-szanse-na-delegacje.html>

Additionally, it must be pointed out that the authority of court presidents is also greatly limited in terms of managing judicial positions within the court itself. The ability to move judges from one department to another is limited by law (it requires the consent of the judge), and additionally is not justified in every case: For example, such a transfer requires a change in the judge's speciality.

"I was aware that we had a little too many here, and a little too few there, but it wasn't like you could move these positions around easily; it's hard to transfer a civil law specialist who handles serious cases to the criminal department, because what are they going to do there?"

Our interviewees' comments indicate that the lack of judges and of the ability to fully use the positions assigned to a court was one of the most important systemic problems of the judiciary. In many cases, the lack of appropriate judicial staffing could lead to a slowing of the work, or unreasonable delays in proceedings – and it is precisely these factors that were given as the reasons for the negative evaluation of the presidents when they were dismissed.

Unreasonable delays in proceedings

The insufficient number of judges was one of the direct reasons for unreasonable delays in proceedings in courts directed by our interviewees. Almost all of them indicated that during their tenures as court presidents, parties to cases filed complaints about delays. In larger courts, in which the number of cases coming in and the percentage of vacancies exceeded 10%, the interviewees said the problem of delays is growing.

"The number of cases is growing, but this doesn't prompt an improvement in staffing, which is why increasing delays are appearing."

Meanwhile, slowness in proceedings was not always a result only of insufficient personnel; in some court divisions, delays also had causes including sudden growth in the number of cases coming in, or backlogs arising within the courts. In this case, in relation to complaints that were found to be justified, the ruling courts indicated that the reasons for the delays were personnel shortages, and not, for example, poor organisation of the court or the judges' work.

Although the majority of interviewees indicated that in their courts chronic delays were confirmed in particular proceedings, according to the clear majority these were individual cases. In only three cases was it indicated that in most of them the complaints of delays were found to be justified.

Relationships with court directors

Asked about their working relationships with court directors, in the majority of cases the interviewees assessed them as good or very good. The interviewees' comments did not indicate that the changes in the law in the area of strengthening court directors, which took effect in mid-2017, affected this relationship.

The majority of interviewees stressed that court directors are very good specialists, engaged in work on behalf of the court. They also stressed that in the case of this relationship, it was also important to set the areas of authority and to develop an internal model of decision-making. Nonetheless, the interviewees also indicated that a court president's ability to influence the work of a director is significantly limited.

"In the area of managing the assets of the State Treasury, the director's supervisor is the Minister of Justice, there's no question. The president does not take part, at any stage or in any way, in the process of managing State Treasury assets."

"I can't speak of supervision of the director's work, because I didn't have any tools for this. Nonetheless, I trusted this individual that what they represented to me was true."

Relationship with the Ministry of Justice

In terms of their assessment of the working relationship between court presidents and the Ministry of Justice, the interviewees' responses were dominated rather by negative assessments. Four interviewees assessed the relationship as bad, and a further three indicated that over the past two years, the relationship had visibly worsened. However, it must be noted that three interviewees assessed the relationship with the Ministry of Justice as good or very good. The remaining interviewees refrained from making unequivocal assessments, pointing either to areas

of the relationship that they viewed as examples of negative practices, or stating that the model of cooperation between the courts and the Ministry is being reduced to performing supervisory functions.

"You can't speak of cooperation [between court presidents and the Ministry -ed.]. It's more like supervisory functions, which didn't go beyond reporting."

"This relationship wasn't much – they didn't hinder me or help me, they just kept quiet."

The interviewees who assessed the relationship with the Ministry of Justice positively pointed first of all to the qualifications and competence of officials of the Common and Military Court Personnel and Organisation Department. But while praising the preparation of the department's officials, the interviewees indicated that in current conditions they have no decisionmaking power. Insofar as smaller problems related to the functioning of a court could be resolved at this level, the most important problems, e.g. those concerning shortages of judges, were dependent on decisions from higher levels of the ministry. In turn, in terms of the direct working relationship with the Minister of Justice, the interviewees who had such a relationship evaluated it quite critically, pointing to the ministry's imprecise resolutions of courts' needs and situations.

"My relationship with Deputy Minister Łukasz Piebiak was very bad from the start. Additionally, it was difficult to establish contact with Mr Piebiak – numerous official duties must have meant he didn't have time for this [...] I can in no way agree with the evaluation of the Ministry of Justice when it comes to the evaluation of the court's needs."

In some of the interviewees' comments a certain frustration related to the relationship with the Ministry was also clear. The interviewees pointed first of all to inconsistent standards in communication with the ministry. For example, while letters concerning judicial vacancies went unread for weeks, correspondence concerning complaints about judges or the courts' operations was passed on within a week.

The interviewees who assessed the relationship with the Ministry negatively pointed out first of all that in recent years, the role of the court president has been decreasing, and the president "is becoming an unofficial staff member of the Ministry of Justice". In this area, our interviewees pointed to growing statistical duties, which they believe are certainly necessary, but considering the lack of administrative personnel in the courts can be excessively burdensome.

"It's Utopian to think that because all the reporting is done electronically, these data just generate themselves."

Also significant for the interviewees was the limitation of court presidents' competences in recent years; they believe that in practice, the role of the court president, in juxtaposition with the growing authority of the Minister of Justice, is increasingly being reduced to responding to complaints from parties to cases, and presenting statistical information to the ministry. Simultaneously, the interviewees also pointed out violations of the boundaries of external supervision by the ministry, and cases in which the Ministry requested information on specific proceedings. After the 2012 amendment to the Law on the System of Common Courts, the Minister of Justice only performs external supervision of courts' operations, and does not have the authority to supervise the handling of particular cases. Even so, some interviewees indicated that for several years (including under the previous Ministry leadership) there has been a tendency for the Ministry to increase its oversight of cases that are under way.

"Since autumn 2015 a huge number of public complaints to the Ministry of Justice started to flow in – actually in 2005-2007 I observed the same thing [...] there were also cases where someone went into an MP's office with a request for some kind of intervention. The MP intervened with the Ministry of Justice, which expected us to provide information about what actions we planned to take in particular cases. This started to take on a form contrary to the regulations on the system of common courts."

"Since the time the current Minister has been in power it has changed, in that there is a kind of direct supervision – not supervision of the president, but supervision of the court. The Minister is assigning himself more authority [...]."

The tendency to limit court presidents' supervisory authority and weaken their positions was visible even in seeming less important matters, such as maintenance of computer systems.

“As late as early 2011, or 2012, the court would get a letter with a request for consent for the IT systems maintenance team to carry out work on the court’s property. In recent years, these teams have started to come in without asking.”

The broadening of the ministry’s authority with respect to the courts, with the simultaneous restriction on the position and authority of court presidents, could be caused by the decline in confidence in court presidents observed by certain interviewees over the past two years. All of these factors caused a gradual worsening of the model for interaction between the courts and the ministry.

“Since November 2015 we have gone through a slow evolution, toward the assumption that court presidents don’t do anything, and are just hanging on to their positions. It was aimed at putting together the Ministry’s own management team.”

6. The process of dismissing court presidents and vice presidents

The July 2017 amendment to the Law on the System of Common Courts introduced a transitional regulation, under which the Minister of Justice, within six months from the date the act took effect (i.e. until 12 February 2018), could dismiss the presidents and vice presidents of all courts. The regulation provided for full discretion in decisions, and did not oblige the Minister to provide any justification for the dismissal of presidents or the appointment of new court leadership.

At the end of August 2017 Association of the Polish Judges Iustitia, the largest association of judges, called on its members not to take up the positions of presidents and vice presidents dismissed under the new act. *“This extraordinary procedure obviously violates the constitutional principle of the separation of powers and the separation of judicial power from ‘political power’. The absolutely dominant position in the common courts is now held by a politician: the Minister of Justice and prosecutor general. For this reason we appeal to you not to take up positions vacated by the presidents who have been thrown out under this procedure. Let us remember that behind every such decision is a depriving of our colleagues of their functions, in a way that abuses all legal and interpersonal principles.”*²⁰

According to the information provided by the Ministry of Justice, the Minister dismissed 149²¹ court presidents and vice presidents around the country.

Before the dismissal of presidents and vice presidents

More than half the interviewees (12 of them) said simply that they expected to be dismissed before they received the Minister of Justice’s decision, and they were shocked not so much by the dismissal itself as by its form. The majority of interviewees indicated that the wording of the regulation in the amendment to the Law on the System of Common Courts was so unambiguous that it followed directly that the Minister would make decisions on the dismissal of presidents and vice presidents.

“As the Minister said: The regulation wasn’t passed for the Minister not to use it. So, I was waiting for that moment.”

“I would have been an idiot not to expect a dismissal – incapable of reading and understanding the regulation in the act. If this regulation was created, if the possibility exists, it would make no sense to think nothing’s going to happen.”

Simultaneously, four interviewees expected to be dismissed much sooner, because they knew that the Ministry of Justice was seeking candidates for their positions. Three interviewees received signals that the Ministry of Justice or people citing their contacts in the Ministry were getting in touch with potential replacements for the interviewees, before the amendment was even adopted.

“As soon as the planned changes in the Law on the System of Common Courts and their scope were known, right then there was a new candidate for president.”

²⁰ Iustitia Association, appeal concerning positions that have become vacant, <https://www.iustitia.pl/informacje/1874-apel-w-sprawie-zwalnianych-stanowisk-funkcyjnych>

²¹ Information provided by the Ministry of Justice via access to public records

In turn, after the law took effect, in the case of another interviewee, from the moment when the new regulations took effect, the judge received five phone calls from other judges, who informed him that they had been contacted by people claiming to have contacts in the Ministry of Justice and offering that they could take over his position. Each of the five people declined.

"I was very encouraged by the reaction of the judges: not only did people whom I could consider my close colleagues turn down this position, but also people with whom I had had disagreements many times."

Another two interviewees indicated that they had expected dismissal as a kind of punishment for their previous activities. The remaining four interviewees had heard rumours in their circles of the dismissal of other court presidents and vice presidents. This information, transmitted by the grapevine, also included the subject of informal contact with candidates by people claiming to have contacts in the ministry.

"Q. Were these people from the ministry?"

A. It varied. Authorised people or employees conducted these conversations. It was all behind the scenes and unofficial. And I have very selective information and I don't have a full picture – probably nobody does."

The rumours about possible dismissals, combined simultaneously with speculation surrounding who could take over the leadership of the court, was bound to have a negative effect on the work atmosphere in the courts. The lack of transparency in how decisions were taken and the uncertainty over when they would be announced by the Ministry meant that some interviewees interpreted the whole process of management changes in the category of backstage games or in fact a certain form of conspiracy against them.

"This awareness of this kind of conspiring behind our backs – especially because the new court president never engaged in the life of the court. Just from the point of view of human relations that's awful."

Only 1 out of 20 interviewees said their dismissal was to some degree a shock, especially because his court had been posting very good results at the time, and no concerns were ever voiced about the court's functioning or the judges. The remaining majority of the interviewees, from the moment the amendment took effect, were working in uncertainty about how long they would remain in their jobs.

"You were just waiting around for the fax – maybe they'll send it on Friday, maybe on Monday?"

Dismissal of presidents and vice presidents

The Minister of Justice was dismissing court presidents and appointing new ones more or less from mid-September 2017²² until the last day the transitional regulation was in effect, i.e. until 12 February 2018.²³ The last of the dismissed presidents received decisions on their dismissals with an earlier date.²⁴ Court presidents were dismissed either one at a time, or in groups, for example in the Katowice, Kraków and Poznań appellate court areas.²⁵

An analysis of information on the dismissal of court presidents does not indicate any concrete mechanism of dismissal: dismissals were not determined by questions of merit (as we describe further in the rest of this chapter). The order in which the Ministry of Justice made its evaluation, and the scope of the evaluation, are also unknown – it's not known whether the Ministry started its evaluations from the courts where the situation was supposed to be the worst, or from those with very good performance. Nor is it entirely known whether the Ministry made such an evaluation in every court. In combination with the interviewees' comments about how the new court

22 Łukasz Woźnicki, "Czystka w sądach rozpoczęta? Ziobro odwołał wiceprezesów Sądu Okręgowego w Warszawie" (Beginning of the court purge? Ziobro dismisses Warsaw Regional Court vice presidents), *Wyborcza.pl*, <http://wyborcza.pl/7,75398,22366993,czystka-w-sadach-rozpoczeta-ziobro-odwolal-wiceprezesow-sadu.html>

23 Rzeczpospolita, "#RZECZO PRAWIE: Piebiak o wymianie prezesów i wiceprezesów sądów" (#RZECZO PRAWIE: Piebiak on replacements of court presidents and vice presidents), <http://www.rp.pl/Sedziowie-i-sady/180219848-RZECZO PRAWIE-Piebiak-o-wymianie-prezesow-i-wiceprezesow-sadow.html>

24 Agnieszka Dobkiewicz, "Kolejny prezes sądu odwołany faksem. Tym razem w Świdnicy" (Another court president dismissed by fax, this time in Świdnica), *Wyborcza.pl*, <http://wroclaw.wyborcza.pl/wroclaw/7,35771,23017649,kolejny-prezes-sadu-odwolany-faksem-tym-razem-w-swidnicy.html>

25 See e.g. Mariusz Jałoszewski, "Wielka czystka w sądach na Śląsku i w Zagłębiu. Odwołani prezesi i wiceprezesi. Przerwano ich kadencje" (Great purge in Silesia and Zagłębie courts: presidents and vice presidents dismissed in mid-term), *OKO.press*, <https://oko.press/wielka-czystka-sadach-slasku-zaglebiu-odwolani-prezesi-wiceprezesi-przerwane-kadencje/>; Ministry of Justice, "Wyniki oceny efektywności pracy sądów" (Results of evaluation of court efficiency), <https://www.ms.gov.pl/pl/informacje/news,10257,wyniki-oceny-efektywnosci-pracy-sadow.html>

presidents were sought by the Ministry long before the dismissals were announced, this leads to the conclusion that the presidents were usually dismissed when a new candidate had already been identified.

Even though the majority of interviewees expected their dismissal, receiving the notice itself was still a certain shock for them.

“After these rumours you had to expect to be dismissed, but I didn’t assume it would take such a rude form, both from the Ministry of Justice and from my replacement.”

The majority of dismissal decisions were delivered to our interviewees by fax. However, before the fax arrived at the court, they had already heard the information, e.g. through an informal phone call from the Ministry of Justice or SMSes from a person who had received the information from the ministry; from the ministry’s website; or by phone from a higher court.

“The lady [from the Ministry of Justice -ed.] wanted to let me know in advance, before the fax landed in the office. But the fax literally arrived as I was talking to her.”

In the majority of cases the originals arrived only after a few days, either by courier or from the presidents of higher courts. The originals were most often handed over by the new court leadership.

“It was what I called the Ceremonial Handover of the Original of the Dismissal. The president and I had a perfectly pleasant talk, during which he thanked me for very good work and effects of the court’s work. When I replied that the Ministry had a different view of those effects, the atmosphere of the meeting got significantly worse.”

Each of the decisions had the same form: a one-sentence notice of dismissal, with an earlier date, without any reasons given. The interviewees had a negative view of this form of dismissal, first of all because they were backdated. The earliest the interviewees learned of their dismissal was the day the fax was sent or the information was announced; up to that moment, they took decisions as court presidents. The interviewees wonder what happened with the decisions they took on the day the decision took effect, while they themselves didn’t know yet about their dismissal. In such a situation, the interviewees didn’t have the right to perform administrative actions as court presidents, and their decisions should be invalid.

“I regret this, because it complicates the work of the court – it would have been enough for somebody to call from the Ministry and say the dismissals were going to happen, then I wouldn’t have made these decisions, and I could prepare a handover of responsibilities.”

A further issue assessed negatively or very negatively by the interviewees was the method of communicating the justification for the dismissal. As was already indicated in the introduction to this chapter, the Minister was not obliged to justify his decisions. Still, in publishing announcements of the dismissals on its website, in some cases the Ministry also provided an “evaluation of work efficiency” for a court that was meant to be a justification for the dismissal. From September 2017 to February 2018 the Ministry published 11 such announcements, providing information about changes in a total of 81 courts of all instances levels (the announcements don’t present information on all dismissals of presidents and vice presidents).

In some of the announcements, concerning 33 courts, the Ministry of Justice only announced changes in the management, but in the case of more than half the courts (43) the Ministry also provided information on the criteria that lay behind the dismissal. It is significant that before beginning work on checking the courts’ efficiency it did not publish the rankings it referred to in the statements, and the assessment of the courts’ work was made from a wide variety of angles.²⁶ The statements also mention criteria such as: measures of handling of the inflow of total cases, criminal cases and civil cases; the percentage of criminal and civil cases resolved on their merits; and finally the average length of proceedings. The statements do not present a deeper analysis of the situation of courts in a given region or appellate area. On the contrary, they present only a selection of the weakest indicators for the courts in question, e.g. when announcing the dismissal of a court president in Częstochowa, the Ministry provided two indicators: the court’s ranking on criminal matters among regional courts, and the average length of proceedings in unresolved criminal cases. In the same statement, the Ministry also announced the dismissal of the president of the Regional Court in Włocławek (for which the deciding criterion was the general indicator

²⁶ In mid-February 2018, the ePaństwo Foundation received information from the Ministry of Justice that the ranking of court’s work had not yet been completed (<https://epf.org.pl/pl/2018/02/21/ranking-sadow-yeti-skladzie-porcelany/>). For the purposes of this report, the HFHR also filed a request for access to this information, which was not provided to us before the date of publication.

of handling inflows, but the percentage of inflows of re-instigated criminal cases was also pointed out), and the District Court in Tarnobrzeg (criterion provided: general ranking on civil cases).²⁷

Still, none of the statement contained more in-depth information, taking into account e.g. the particulars of an individual court's work, the number of cases handled and simultaneously the actual number of judges working in the court.²⁸

"It was a statement that really bewildered me [...] the argument that was meant to demonstrate my poor management of the court was a situation in the department [...] that several judges had left recently. You can expect a lot of arguments, but not that one."

Also noteworthy is that the majority of data subjected to evaluation supposedly came from the first half of 2017 (and thus from a time when no new concurs for judicial positions were being announced, and the Ministry had introduced a procedure complicating the delegation of judges). Secondly, the last statements were published before the middle of February 2018, and thus not long before the Ministry received complete information for the entire year of the courts' work.

In this context it is difficult to avoid the impression that the Ministry of Justice did not perform an objective evaluation of the courts' work, but sought out the weakest points in their operations, to find any way to justify the personnel changes being introduced. Information from one of the interviewees indicates that the new court president simply admitted that the statements and the information they contained were only a pretext for dismissing presidents.

"The new president, asked [...] about the reasons for my dismissal said something like 'what it said in the statement was just a pretext'."

Thus, it is no surprise that our interviewees assessed the ministry's statements as "manipulated", "cynical", "dishonest" and "deeply unjust".

"I absolutely do not agree that conditions have improved since our president took over. But there were factors, for which we are objectively not to blame, that affect all of this. Meanwhile, nobody presented a calculation of management of inflows, etc. The current president also doesn't care about the true numbers."

"I'll tell you, it really shook me to the core – not for myself, but I know how hard the judges in that department work. Using only one statistic, without analysing the context and being aware that three months earlier the Ministry refused to delegate judges to that department, I view very negatively."

Those interviewees who served as court presidents were dismissed along with their vice presidents (in seven cases). The interviewees also pointed to cases they knew of vice presidents who were not dismissed along with the presidents of their courts, but voluntarily resigned from the position or waited until the end of their terms (which came soon after the president's dismissal) and declined to seek another term.

"I had my resignation [from the position of vice president] ready in my laptop when it turned out that I hadn't been dismissed [...] I wouldn't have stayed a single day, a single hour longer in that position."

The dismissal of vice presidents, particularly in smaller courts, gave rise to practical complications: In at least two cases the dismissed vice presidents were also department heads. Only after their dismissal from the role of vice

27 Ministry of Justice, "Ocena efektywności pracy sądów" (Evaluation of courts' efficiency), <https://www.ms.gov.pl/pl/informacje/news,10359,ocena-efektywnosci-pracy-sadow.html>

28 Ministry of Justice statements are available at:

<https://www.ms.gov.pl/pl/informacje/news,10418,ocena-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10382,wyniki-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10359,ocena-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10299,ocena-efektywnosci-pracy-sadow-w-lodzi-i-toruniu.html>

<https://www.ms.gov.pl/pl/informacje/news,10257,wyniki-oceny-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10190,wyniki-oceny-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10075,decyzje-w-sprawie-krakowskich-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,10003,ocena-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,9888,ocena-efektywnosci-pracy-sadow.html>

<https://www.ms.gov.pl/pl/informacje/news,9887,ujawnienie-tajemnicy-sedziowskiej.html>

<https://www.ms.gov.pl/pl/informacje/news,9761,nowy-prezes-sadu-apelacyjnego-w-gdansk.html>

president were they also dismissed from the role of department head, with an indication that this role was being performed only so long as they held the office of vice president.

In the majority of cases (15 out of 20), simultaneously with the dismissal of the interviewees, their replacements were designated. Thus, the process of the management handover was practically immediate. The interviewees almost immediately packed up, left their offices and handed their replacements a list of current matters.

More than half of the interviewees (11 out of 20) considered various reactions to their dismissal, including taking legal steps to oppose it. The possibilities they analysed included a request to the Ministry of Justice for a full justification of the decision, claims for violation of rights and labour law claims. But simultaneously, the interviewees were aware of the small chances of success for such actions. One of the factors that discouraged them from requesting a justification from the Ministry of Justice was the conviction that such requests would go unanswered anyway.

With regard to claims of rights violations, the interviewees whose courts were mentioned in Ministry statements indicated that the majority of statements didn't include defamatory content.

An exception in this area may be the case of judge Beata Morawiec, who filed a lawsuit against the Ministry of Justice for a statement it published in which it said her dismissal was connected with corruption in courts in Małopolska province.²⁹

In turn, with regard to possible labour law claims, interviewees' opinions were divided. Some believed that a judge's employment relationship is established on the basis of an appointment, and in the case of a dismissal, there is a narrower than usual path to appeal. Others in turn believed that the only possibility for any kind of recourse was a claim limited to financial compensation as a result of lost bonus payments. But this solution was not possible, because the interviewees feared that they could be accused of base motives, and such a claim could be reduced in the eyes of the public to a simple pursuit of money owed, and not a fight for judicial independence.

Eight interviewees indicated that even though they received both the dismissal and the way it was performed quite critically, they do not plan any actions in response.

"We didn't want to put on a show, but we also came out of it a little bruised."

After their dismissals, the clear majority of interviewees (16 of 20) work as ordinary judges in the courts where they previously served as presidents or vice presidents. Even though none of the interviewees mentioned the possibility of leaving the profession – on the contrary, several of them were somehow relieved that they could return exclusively to trial judge duties – the comments of at least three interviewees included statements that the dismissals could have significant effects on their careers.

"How do you see your future career as a judge?"

"Well, I don't plan to seek any promotions."

"Do you see any possibility of promotion for yourself?"

"Well, how?!"

7. New court management

The amendment to the Law on the System of Common Courts introduced changes in the appointment of court presidents. Until July 2017 the Minister of Justice had to present candidates for president to the general assembly of judges and receive the assembly's opinion. The changes introduced in July 2017 removed this obligation, and the decision to appoint new court management is entirely in the hands of the Minister of Justice. Nor did the new regulations introduce any criteria or procedures the Minister should be guided by in selecting new court presidents. The Minister's complete freedom in selecting new court presidents was visible in the information provided by our interviewees.

²⁹ TVN24.pl, "Odwołana prezes sądu pozywa ministra sprawiedliwości. 'Poniżenie mnie i godności mojego urzędu' (Dismissed court president sues Minister of justice: "Degrading to me and to the dignity of my office"), dostępne na: <https://www.tvn24.pl/krakow,50/krakow-sedzia-beata-morawiec-pozywa-ministra-sprawiedliwosci,803517.html>

The new court presidents

At the moment the interviewees were conducted, new presidents and vice presidents had been appointed in the courts of 18 of them. In 12 cases the new presidents were judges who had earlier worked in the interviewees' courts, and thus the interviewees had quite a through view of their earlier work. In the interviewees' comments the opinion dominated that the new presidents might not yet have sufficiently developed the qualifications they needed to assume these positions, or never had these qualifications. In the cases indicated by our interviewees, only three of the new presidents had earlier held any position in the courts. The people who took over the positions of president included e.g. judges with the least seniority, or judges whose candidacies had earlier received negative opinions in the selection process for other positions in the court. As part of our analysis of media reports (see box) we also collected information on cases including new court presidents who had been subject to disciplinary proceedings.

"This is a judge who would never be considered for a promotion of this type, because nobody saw in him characteristics that would indicate that the duties would be performed well."

"I assess the changes in the court as the introduction of a Misiewicz³⁰"

Controversial appointments of new court presidents

From August 2017 until February 2018 the media described cases of appointments as court presidents of judges whose candidacies raised questions, e.g. because of their career paths or lack of sufficient competences.

In the Wałbrzych District Court the new president was a judge who had been serving for less than two years. The new president had entered concours to become a judge 52 times before succeeding.³¹

The new president of the District Court in Suwałki is a judge who several months earlier had overturned a verdict finding activists of the opposition Committee for the Defence of Democracy not guilty.³²

The new president of the District Court for Kraków Śródmieście had earlier been given disciplinary penalties for professional misconduct, including unjustified delays in proceedings.³³

The new president of the Wodzisław Śląski District Court had been sentenced in a disciplinary hearing. At the time when he took office, another disciplinary proceeding against him was under way for "actions considered gross violations of the law or an affront to the dignity of a judge."³⁴

Another striking thing in the information provided by the interviewees is that the choice of court presidents or vice presidents could have been determined by factors other than an evaluation of their merits. The interviewees had information indicating that in certain cases the appointment of the new judge could have been determined by their close relationships with representatives of the Ministry of Justice.

"It's hard to talk about this at all, because it's all in the realm of speculation that we swap back and forth. But from what I know the new president is a friend of Minister Piebiak, in fact he [the new president], was an even closer friend of one of the vice presidents – these are people who were already in some kind of contact with the ministry."

30 A reference to an aide to Defence Minister Antoni Macierewicz, whose name became shorthand for nepotism after revelations that he held his position despite lacking educational and professional qualifications, and despite accusations of corruption.

31 Tvn24.pl, "Przegląd prasy. 52 razy próbowała zostać sędzią. Po ponad roku została prezesem" (Press review: She tried to become a judge 52 times; after more than a year, she became court president), <https://www.tvn24.pl/wroclaw/44/przeglad-prasy-nowa-prezes-sadu-rejonowego-w-walbrzychu,800389.html>

32 Konrad Kruszewski, "Suwałki: Nowy prezes Sądu Okręgowego. To nominacja polityczna?" (Suwałki – New district court president. A political nomination?), Onet.pl, <https://bialystok.onet.pl/suwalki-nowy-prezes-sadu-okregowego-to-nominacja-polityczna/40b9cmh>

33 Jarosław Sidorowicz, "Nowy prezes Sądu Rejonowego w Śródmieściu karany dyscyplinarnie" (New president of Śródmieście District Court had disciplinary sanctions), Wyborcza.pl, <http://krakow.wyborcza.pl/krakow/7,44425,22803139,nowy-prezes-sadu-rejonowego-w-srodmiesciu-karany-dyscyplinarnie.html>

34 Grzegorz Łakomski, "Mobbing i rażące naruszenie prawa - mają na koncie prezesi sądów mianowani przez Zbigniewa Ziobrę" (Workplace harassment and gross violations of the law on the CVs of judges nominated by Zbigniew Ziobro), Wp.pl, <https://wiadomosci.wp.pl/mobbing-i-razace-naruszenie-prawa-maja-na-koncie-prezesi-sadow-mianowani-przez-zbigniewa-ziobre-6190193822271105a>

“First of all, these were personal friendships with a deputy Minister of Justice. The deputy Minister had a lot of activities besides the courts – all the rallies, meetings, trainings [...] he knows a lot of people all over Poland and was in contact with many people, and as a deputy Minister he didn’t break off these contacts.”

The nominations of court presidents, combined with quite a selective analysis of the situation in the courts and evaluation of their efficiency, indicates that in practice the main purpose of the amendment to the Law on the System of Common Courts was not improving the work of the courts, but far-reaching replacements of personnel. According to the interviewees, an analysis of which judges became presidents leads to the conclusion that the changes in the courts were motivated first and foremost by the desire to make personnel changes.

“We have the conviction that wherever there was a candidate to replace the president, that’s where changes were made. I don’t see any other justification in these decisions.”

The information provided by our interviewees also indicates that in at least two cases the new court presidents are also delegated to higher courts. This not only gives rise to complications in terms of managing the court, but can also be interpreted as violating the Regulations for Office-holding of the common courts.

“Until now, when I wanted to be delegated to another court, I had to give up the role of president. That was according to the Regulations. And now it looks like the president can go from a lower court to a higher one and simultaneously be the president in the lower court. They don’t respect the law that they themselves passed!”

Additionally, in light of the amendment to the Law on the System of Common Courts, the Minister of Justice should present the new court president to the assembly of judges of the appellate area. But in 19 cases the interviewees indicated that no new president was presented by the Ministry of Justice.

The interviewees indicated that news of the new court management was spread via the rumour mill, or court presidents introduced themselves to the judges and court employees.

Changes introduced in the courts

The amendment to the Law on the System of Common Courts places on the new court presidents the obligation to conduct a review of the work of the departments, and grants them the ability to dismiss department heads. This competency is limited in time to the first six months from the appointment of the new president.

Information provided by the interviewees indicates that in three cases, the new court presidents dismissed all or some of the department heads, while the interviewees did not indicate whether the needed analysis was in fact conducted. In two cases the interviewees assessed the change of department head very negatively, pointing out that these roles were assumed by people who had the biggest problems with controlling their areas of responsibility. In one case, the interviewee said that a very good judge was made the new department head. In the remaining cases, at the time the interviews were conducted the department heads in the interviewees’ courts remained in their positions. In one case, the interviewee provided information about two department heads whom the new management had threatened with disciplinary proceedings.

Another significant aspect of assessing the changes introduced by the new court management is the assessment of how these changes translate into an improvement in the courts’ functioning. Information provided by the Ministry of Justice indicates that one of the main goals of introducing the amendments to the Law on the System of Common Courts was precisely to improve the courts’ efficiency. Changing the leadership of the courts was also presented by the Ministry as one of the stages of achieving this goal. But the clear majority of interviewees, asked whether the changes had moved the new presidents in the direction of improving their work, responded that no changes had been introduced, and that “everything is as usual.” Additionally, in certain cases the new presidents praised the work of the previous presidents and said they would continue pursuing the directions of development their predecessors had laid out.

“In conversations (with judges and administrative workers – ed.) he gave assurances that the former president was great, and he wasn’t going to change anything. He reassured everybody that he didn’t plan to introduce any personnel reshuffles – everything’s supposed to be like it’s been up till now.”

“The president decided that there would be no personnel changes – everything’s set in stone.”

The only exception in this area, an unquestionably positive one, was the example cited by one interviewee, who pointed out that the new court president had taken real steps aimed at improving the service provided to parties to proceedings; this work had been initiated by the previous leadership, and at the moment they were dismissed it was already at an advanced stage. It is also significant that in the case of three courts, the Ministry agreed to delegations of judges that the previous president had sought earlier, or to the assignment of a higher number of assessors or magistrate judges. Here it is necessary to note that the expected “unfreezing of judicial positions” will undoubtedly have an effect on judges’ work, while the expected better results of this work won’t have anything to do with the change of the courts’ leadership.

Additionally, in four courts the interviewees indicated that the new presidents took certain actions toward changing the organisation of the courts’ work, though thus far these were preliminary decisions or changes that didn’t deeply modify the system of work, even though they could translate into lower efficiency (e.g. shifting all assistants to a single department).

Against this backdrop, the situation in three courts stands out, where the new presidents introduced a range of changes in the court’s functioning (merging departments, personnel shifts and changes in the physical organisation of the court building). In two cases these changes had such a severe effect on the work of the court and its administrative workers that the interviewees interpreted it as “the new presidents’ revenge” against the judicial community.

Forms of exerting influence on judges

A significant problem both before the process of dismissing court leaders began and after it ended was the question of potential pressure on judges. Half of the interviewees said they never experienced any form of pressure, neither external (e.g. from the Ministry of Justice or public opinion) or internal, including peer pressure.

But the other half of the interviewees indicated that during their terms as court presidents and as judges they encountered or observed attempts to exert various forms of pressure on judges. In this group, the greatest number of interviewees (five) said some of the memoranda and requests they received as court presidents from the Ministry of Justice were formulated in an emphatic tone and included unequivocal demands in areas such as changes in the organisation of the court. The interviewees believe such letters could serve to exert a certain kind of pressure on the president, and it was exclusively up to them how they would respond.

“I think I’m quite resistant to receiving this kind of signal, but the tone of certain letters from the Ministry was undoubtedly very firm.”

Three other interviewees interpreted the attacks on judges and the dishonest or manipulated information appearing in the media (e.g. the “Fair Courts” campaign³⁵) as a form of exerting pressure on judges.

One interviewee believes that the amendments introduced by the new law contain “a hidden doorway” for Ministry of Justice influence on court presidents, which can in turn have a negative influence on the independence of the courts (for more, see point 9).

“There is no worse enemy for justice than a situation in which the judge is afraid.”

8. Judges’ reaction to the changes

While the amendment to the Law on the System of Common Courts was still being prepared, judges and their organisations were criticising the ideas of the changes, particularly in the area of dismissing and appointing court presidents.³⁶ The introduction of these regulations also drew numerous reactions from the judicial community.

In the majority of cases (14 out of 20) the interviewees encountered reactions of solidarity from the judges in their courts. In the majority of these cases (9) the assembly of judges adopted resolutions in defence of the

35 In September 2017, the Polish National Foundation supported by the state-owned companies run a campaign presenting allegedly the unfairness of the Polish justice system. See more at: <https://www.bloomberg.com/news/articles/2017-09-08/poland-starts-ad-campaign-to-back-court-overhaul-disputed-in-eu>

36 Cf. Association of Polish Judges Iustitia, *Opinia Iustitii w sprawie projektu ustawy o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (druk sejmowy nr 1491)* (Iustitia’s opinion on the bill amending the Law on the System of Common Courts and certain other acts), <https://www.iustitia.pl/opinie/1760-opinia-iustitii-w-sprawie-projektu-ustawy-o-zmianie-ustawy-prawo-o-ustroju-sadow-powszechnych-oraz-niektorych-innych-ustaw-druk-sejmowy-nr-1491>

dismissed presidents and vice presidents. Similar resolutions were also adopted in other courts not covered by the research. The judges usually expressed their opposition to and disapproval of the way the presidents were dismissed, and their thanks to the dismissed presidents for their work. The resolutions were an expression of professional solidarity and opposition to the actions of the Ministry of Justice. In some cases the adoption of resolutions during meetings of judges' assemblies was preceded by a discussion with the new court management, during which the judges asked the new presidents about their motivation for accepting the offer to manage the courts. In these cases the new court presidents met with harsh criticism from judges.

"The judicial community's evaluation of the new president was unsparing."

In the remaining cases the judges didn't decide to take official actions, but in private conversations with dismissed presidents they declared their support and solidarity.

"It was a sad day: Judges came in, they brought me flowers. To be honest, I felt as if I had died and it was my funeral."

In these cases, also during the first assemblies of judges that took place after the change in the court's leadership, the judges did not initiate discussion on this subject.

"It's hard for me to explain. At our meeting there was such a stiff atmosphere: There was no will to fight; I think the judges themselves didn't know how to act."

In five cases the judges either considered but didn't undertake actions toward an official reaction, or completely didn't plan such actions. In the last case the interviewer admitted that the decision to dismiss him divided opinion among other judges.

As time has passed since the dismissal, the changes have begun to have a negative effect on the work atmosphere in the courts. Asked about the current mood among judges, the interviewees described disappointment, despondency and discouragement.

"There was disappointment and this kind of irritation; that was true of most people, but it wasn't so overwhelming."

"Today it's stagnation. Stagnation in every aspect."

9. Evaluation of the changes introduced by the amendment to the Law on the System of Common Courts

All interviewees assessed the changes introduced by the amendment to the Law on the System of Common Courts negatively or very negatively. The clear majority of them stressed that the new regulations did not at all address the greatest problems that the justice system is currently struggling with (including first of all the growing personnel shortages). In the most critical statements, interviewees described the changes as "pseudo organisational changes" or "total lawlessness".

Nevertheless, two interviewees pointed to certain positive elements of the amendment, such as the regulation of social and insurance questions concerning judges (including e.g. making the regulations on anniversary awards more precise), and the introduction of the function of coordinator for international matters. Meanwhile, the interviewees indicated that these changes did not constitute a reform of the justice system, and didn't address its most important problems.

The remaining interviewees stressed that the changes were not a reform of the justice system and did not in any way improve its organisation or make proceedings more efficient.

The interviewees' evaluation of the amendment's changes concentrated on analysis of the amendment's influence in four areas: the position of court presidents; judicial independence; the functioning of the courts; and the protection of the right to fair proceedings before an independent court.

The amendment and the position of court presidents

Almost all of the interviewees evaluated the changes (both those introduced by the transitional regulation and those that took effect after 12 February 2018 in the area of appointing court presidents and vice presidents) unequivocally negatively. The interviewees pointed to two related flaws in the new solution: the weakening of the position of court presidents by depriving them of legitimacy from the judicial community and making them dependent on the Ministry of Justice, and the difficulties in managing the courts while lacking such legitimacy.

The weakening of the position of the presidents is related not only to the legal changes that resulted in limits on their authority, but also to the changes in their appointment process, which is now de facto dependent on political will, while the decisions can be changed at any time. Such a solution differs fundamentally from the procedures applied earlier. Until July 2017 court presidents were chosen only after receiving opinions from the assembly of judges. Such opinions were simultaneously an expression of support from a court's judges for their candidate, and a demonstration of the candidate's legitimacy to manage the court.

"Earlier it was on the principle of 'nothing about us without us'. Now it's 'everything about us without us'."

Since July 2017 the decisive role in appointing court presidents is played by the Minister of Justice, and in practice court presidents will be dependent on the Minister. The removal of the requirement to obtain the opinion of judges when appointing court presidents not only deprives the new court leadership of the legitimacy it needs, but also has a dispiriting effect on the entire judicial community.

"I always felt that I knew I had the judges behind me and I could make those tough decisions. The strength that support from the community gives is very valuable, especially when you have to wage a tough fight with the Ministry of Justice."

"Until now I felt that the state was on my side. In 2011 that began to slowly change, but I still had the feeling that the state protected me as a judge. Now everything has changed – now I have the impression that the state stands in opposition to us, and judges are supposed to become bureaucrats."

Some interviewees' fears were also aroused by the way the authority of court presidents will be exercised by the new individuals, and whether it will possibly be used to influence trial judges. The interviewees indicated that court presidents have quite broad powers in managing the courts, and it is important to sense the boundary between administration of their work and crossing into the area of jurisprudence. For example, if a court president has the backing of their community, their suggestions on the organisation of work during a proceeding will be received differently than the same suggestions coming from a president appointed by the Minister of Justice.

"If the new president wanted to interfere in any jurisprudential competence of a judge, that would be a violation of the principle of judicial independence. But the boundaries that can't be crossed are very discretionary, very fine [...] if you assume that the president, as a person who exercises only administrative supervision, makes requests concerning a proceeding – that decision can be received in various ways, but time will tell."

The amendment to the Law on the System of Common Courts and judicial independence

Dziewięciu Nine interviewees indicated that the amendment of the Law on the System of Common Courts will affect or may affect judicial independence. Two further interviewees indicated that whether the new regulations affect judges and their work depends first of all on the judges themselves. The new regulations weaken the guarantees protecting judges against pressure and open the doors to potential abuse.

"There's always some potential threat camouflaged in all of this. That's why you set up security measures, so you don't have to trust people for everything. That's why these changes can potentially be used to make life difficult for judges who don't rule the way somebody wants them to."

In four further cases the interviewees pointed out that as a result of the changes, judges are increasingly fearful for their futures in the profession.

"I see that my colleagues are afraid; they wonder: 'What can they do to us? What will happen if they flatten the court structure, and the authorities introduce nominations for common court judges, and don't give such nominations to everybody?'"

One of the most important charges levelled against the amendment to the Law on the System of Common Courts in interviewees' comments was one concerning the constantly expanding authority of the Minister of Justice in the area of the courts' operations and judges' work. Even though we still can't speak of the politicisation of the courts, the changes that have been introduced create mechanisms that could make it possible for the Ministry of Justice to directly influence the work of the courts. According to two judges, changes in this direction are de facto aimed at restricting judges' independence, and as a result, in the most extreme case will lead to a redefinition of judges' role.

"These changes mean judges will stop being judges, and become state bureaucrats."

In assessing the possible effect of the amendments on judicial independence, the interviewees also pointed to the broader context of the changes. The amendments to the Law on the System of Common Courts were adopted not long before the Sejm also amended the act on the National Judiciary Council and the Supreme Court, which significantly influence the justice system, including access to the judicial profession and promotions. Some interviewees expressed the opinion that these changes may make it possible to promote particular individuals on a basis other than the merit of their work and objective criteria.

"Soon, this [promotions [ed.]] won't be based on merit. Soon these will be the people who 'earned it' somewhere or are in the group of people taken into account. I don't like this. Each of us accumulates a certain experience, which grows along with working on increasingly difficult cases that we deal with."

Interviewees were also concerned about the new regulations' effect on judges' disciplinary liability. According to the interviewees, the regulations may have a chilling effect on judges, holding them back from taking independent and courageous decisions.

"Somebody said that of course it's not going to be like a phone call comes in from the Ministry saying a certain case is to be decided this way. I think it won't be like that, but that's the wrong way to look at it. It'll be different – for example a comment from the Minister that a certain case was resolved incorrectly. That's obvious pressure."

One of the views expressed by the interviewees was the opinion that the sum of the changes introduced may lead to a weakening of judges' morale and solidarity, and in the worst case to a restriction of their independence.

"It's hard to say whether every judge has a strong enough backbone that they can resist these pressures – it could vary."

The amendments and court operations

Among the interviewees, the view dominated that the changes introduced were not a reform of the justice system and did not improve the efficiency of the courts' work.

"I don't find anything in the amended law that would contribute to making proceedings more efficient."

The interviewees believe the amendments were not based on an honest analysis of the real problems of the justice system, nor did they address those areas where changes are essential. First of all, the interviewees say, the pace of proceedings is most affected by the current personnel shortages, which are caused by the "freeze on judicial provisions" and failure to take decisions on increasing the number of administrative positions in the courts. In this context, changing the court leadership will not in any way translate into higher efficiency. Secondly, the amendments do not address improving working conditions in the courts, including hiring the proper number of administrative employees, which would relieve the burden on the judges. Thirdly, the interviewees say, an increase in the courts' efficiency cannot be achieved by "corporate-style changes" (i.e. through changing the leadership), but through proper adjustment of criminal and civil procedures.

"The Minister will change the personnel, but here nothing will change."

Additionally, in three cases interviewees indicated that the changes being introduced would have a negative impact on the work of the courts, because management of the courts was entrusted to individuals who do not have sufficient competence in administering courts or in managing their personnel. These interviewees viewed the prospects for their courts quite pessimistically.

"I have no idea how things will look a year from now. Things that used to be impossible are now happening every day, and I'm really not capable of imagining what may happen."

Similar though less critical comments came from two additional interviewees, who expressed certain reservations toward the actions taken by the new management, but simultaneously warned that first of all it is too early to make an objective assessment of these actions, and secondly each president may have their own working style.

The interviewees also pointed out that the change in court management, combined with the announced further work on changes in the justice system (including e.g. the flattening of the court structure) will deepen the chaos in the courts.

The Common Court System Law Amendments and the right to a fair trial

The majority of interviewees stated that the changes introduced by the amendments to the Law on the Common Court System will have some effect on the implementation of the right to a fair trial. Five interviewees said mechanisms for influencing judges and their work had been introduced which, even though they are not visible at first glance for the ordinary citizen who comes into a court, can be used in politically motivated cases. A further three interviewees expressed hope that situations won't arise in which the justice system will be used for political or other ends, though they also admitted that after the changes that have been introduced, this risk exists.

Another seven interviewees indicated that the changes and the accompanying atmosphere will be felt primarily as a decline in trust in judges (judges may begin to be seen as politicised) and a drop in the quality of jurisprudence.

"I see the future of the justice system in shades of black. The community is being shaken up, authority will lose importance, we'll lose our moral compass and conformist attitudes will be very onerous for our community."

10. Conclusions and recommendations

Conclusions from the research:

- **The amendments to the Law on the System of Common Courts do not address the most important problems of the justice system** – the amendments prepared by the Ministry of Justice, despite declarations to the contrary, do not address the most important current problems of the justice system, which include a growing number of judicial vacancies and an insufficient number of administrative employees in the courts. Taking into account the lack of any connection between the changes and the significant problems of the justice system, we can conclude that the amendments were not supported by a sufficiently rigorous analysis of the situation in the justice system.
- **The amendments to the act on the Common Court System will not improve court proceedings** – some of the most important changes introduced by the amendments are the changes in the way court presidents are selected, changes in judges' retirement age and changes in the system of promotion for judges. But the changes in the court management do not translate in any way into making proceedings more efficient. This statement finds support in the majority of interviewees' comments, which indicate that the majority of the court leadership will continue the path of management that the interviewees initiated. Court proceedings could be concluded faster if the Ministry of Justice decided to end the freeze on judicial positions.
- **The process of dismissing court presidents and vice presidents was not supported by a holistic analysis of the situation in the courts** – the Minister of Justice dismissed court presidents and vice presidents on the basis of one-sentence decisions that had no explanation. Simultaneously, in the case of decisions concerning more than 80 courts, the Ministry of Justice published press releases with fragmentary information that supposedly justified the decisions. An analysis of these statements shows that the Ministry was guided by various criteria in the case of various courts. Thus, it follows that such an analysis cannot be considered full and fair. Secondly, the Ministry concentrated on the assessment of just half a year of the courts' functioning: the first half of 2017, when the number of vacant judicial positions blocked by the Ministry was growing astronomically. In this context, the analysis presented in the press statements should be deemed selective, and in no way seen as providing a reliable basis for dismissing court leadership.
- **The process of appointing new presidents and vice presidents was conducted in a non-transparent way and based on irrelevant criteria** – the Ministry of Justice did not conduct any open consultations with the judicial community on the appointment of new presidents. Although the amendments to the act did not introduce such a requirement, such consultations should still have been expected from the ministry, as best practice in court management. Simultaneously, the interviewees' comments indicate that the Ministry of Justice was seeking candidates for judicial positions through private friendships, and took decisions on appointments on the basis of irrelevant criteria.
- **The amendments to the act on the System of Common Courts broadened the opportunities for politicians to influence courts** – the changes in the area of appointing court presidents and vice presidents, as well as the restriction on their competences, in practice aim to broaden political influence on the justice system. The appointment of court presidents by the Minister of justice without consultation with the judicial community deprives court presidents of their essential legitimacy to manage the courts, and additionally makes them dependent on the Ministry of Justice. A court president should have the support of their community, first of all so that they can introduce needed changes to how the court operates, and secondly to protect the court and its judges against political influence. The interviewees' comments indicate that the new presidents, deprived of this legitimacy, are being subjected to a severe ordeal, in which they will be tested not only on their management abilities, but also their personal independence, which may turn out to be essential in resisting potential pressures from politicians.
- **The effects of the amendments to the Law on the System of Common Courts will also affect the protection of judicial independence** – the amendments to the Law on the System of Common Courts are yet another legal act adopted recently that limits judicial independence and impartiality. After two years of work on further acts changing the justice system it can be stated that the majority of guarantees of judicial independence have been removed. The protection of judicial independence now depends primarily on the judges themselves.
- **The effects of the amendment to the Law on the System of Common Courts may violate the right to a fair trial** – the amendments will not make court proceedings more efficient; on the contrary, they may have

a negative effect on the implementation of the right to a fair trial. Insofar as in the majority of cases citizens will not sense any change in the way the courts function, the mechanisms of influencing courts and judges that were introduced may be used in political cases or in those that arouse public interest, which can be used for purposes devised by those in power.

- **The effects of the amendments to the Law on the System of Common Courts will be perceptible for a long time in the functioning of the justice system** – the changes in the functioning of the justice system and the negative publicity campaign against judges that has been ongoing for almost a year are affecting the functioning of the justice system and reducing trust in it. The effects of these changes will be felt for years.

Recommendations

Recommendations for the government:

Taking into account the scale and scope of the changes in the functioning of the justice system, the Helsinki Foundation for Human Rights recommends:

- ♦ a comprehensive, honest assessment of the effects of the regulations, taking into account criteria of the functioning of the justice system from the period before the introduction of the changes and the year after they were introduced,
- ♦ publishing full, accurate information about the dismissal of court presidents and vice presidents, together with an indication of the reasons for their dismissals,
- ♦ introducing changes with regard to the retirement age of judges, to the degree to which it differentiates the retirement ages of men and women and introduces the requirement of consent from the Minister of justice for continued services as a judge,
- ♦ amending the Law on the System of Common Courts in a way that will bring back the model in effect before July 2017 of selecting the presidents and vice presidents of common courts.

For the European Commission:

The changes in the Law on the System of Common Courts may have a negative effect on international cooperation between the Polish justice system and the courts of other member countries. As a result, the Helsinki Foundation for Human Rights recommends:

- ♦ broadening the monitoring of implementation of the recommendations presented to the Polish government as part of the rule of law procedure, to include an assessment of the actual effects of the changes,
- ♦ making the recognition of fulfilment of the rule of law recommendations dependent on a full withdrawal by the Polish government of the solutions in the justice system introduced since July 2017,
- ♦ the European Commission joining the proceedings before the Court of Justice of the European Union at the request of the Supreme Court of Ireland concerning the execution of a European Arrest Warrant in the case of a Pole. This issue encapsulates all the most important subjects concerning the changes introduced to the justice system.

II. Attachment No. I: Interview questionnaire

I Interviewee's professional experience and court organisation

(to be read out at the beginning of the interview)

To start, I would like to ask you about a few organisational issues concerning the work and organisation of the court thus far, your professional experience and cooperation with others thus far.

1.1 Questions on the interviewee's experience.

- How long have you been a judge?
- How long have you been employed in this court?
- What department do you work in?

1.2 How is the court/department you work in organised?

- How many departments and judges are there?
- How many cases are handled on average in the court/department?
- In the cases you handle have the parties complained about undue delays? If so, how often?
- In the past 10 years have cases been heard in your court that drew interest from the media and politicians? If so, which ones?
- Have inspections been conducted recently and if so, what were the key findings?
- Have disciplinary proceedings been conducted against judges from the court/department recently? If so, which judges, and what were the charges?

1.3 For court presidents: How would you assess the relationship thus far with the Ministry of Justice in the area of statistical reporting obligations, organisational matters and international cooperation? Do you know of cases in which judges maintained informal contacts with representatives of the Ministry of Justice? How many judges from your court were delegated to the Ministry of Justice before 2017?

II Personnel changes

2.1 Please describe your work thus far in the position of president/vice president/department head:

- How long have you held this position? When did your term end?
- Were inspections carried out during your time in this position? If so, what were the conclusions?
- Please describe briefly the most important problems in the functioning of the court thus far.
- For court presidents: Thus far, how have relations been between the court president and the Ministry of Justice? In particular, in what way has the Minister of justice carried out external (administrative) supervision – did they encroach on the independence of the court or the judge?
- For court presidents: How has the relationship been with the court director (until 2017 and after March 2017)

2.2 When and how were you informed of your dismissal from the function of president/vice president or department head?

- Had you expected to be dismissed? If so, why?
- Did the dismissal decision include a justification? If so, what was it? If not, what do you believe is the justification for this change?
- Was an announcement of your dismissal and a justification published, e.g. by the Ministry of Justice? If so, do you plan to take steps to correct the information it contained?

2.3 Did personnel changes take place in your court together with your dismissal?

- Were vice presidents and department heads changed? If so, who are the new appointees? Had they worked in the court previously, or performed the functions of judges delegated to the Ministry of Justice?
- Have judges' assistants or administrative office employees been changed?

2.4 Was the newly appointed president of your court presented to the general assembly of judges?

- If so, what was the judges' reaction? (E.g. the outcome of the assembly meeting, opinions among judges and e.g. negative resolutions adopted)
- Was this a judge from the court, or from outside?
- Did similar reactions also take place in the case of the appointment of new vice presidents and department heads?

2.5 Were the personnel changes related to a reorganisation of the court's work? If so:

- What were the first decisions of the newly appointed presidents and department heads?
- How long did the reorganisation of the court's work forced by the personnel changes take?

2.6 During your time as a judge, have you encountered any forms of pressure? Additionally:

- During the process of changes of presidents, vice presidents and department heads, did you encounter forms of pressure e.g. from the Ministry of Justice, other judges or third parties?
- Were you threatened, or subjected to public criticism?

2.7 What is your current role in the court?

III Guarantees of judicial independence

3.1 How would you assess the changes introduced by the amendments to the Law on the System of Common Courts?

3.2 How would you assess guarantees of judicial independence in light of the amended provisions of the Law on the System of Common Courts? (This question applies in particular to the amendment of art. 27 of the Law, and the authority of the Minister of justice to dismiss court presidents after February 2018.)

- Have there been earlier cases of dismissal of a president (against the opposition of the collegium, but with the consent of the NJC)?

3.3 What do you believe will be the effects of the amendments to the Law on the System of Common Courts?

- Do you believe the changes weaken the guarantee of the civil right to an independent court? If so, in what area?
- Do you believe that the changes introduced by the amendments will in practice contribute to making the justice system more efficient? If so, in what area? If not, why not?

3.4 Is there anything you would like to add?

Thank you for your time.

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