

Amsterdam, 16 June 2023

Good afternoon, ladies, gentlemen, members of the audience,

We have come to the final and festive part of this Congress of the European Bars Federation.

It truly is an honour for me – as chair of the foundation Judges for Judges - to present the **special jury¹ award for Bar Association of the Year** to the Warsaw Bar Association, the oldest professional legal association in Poland. The members of the bar of the Polish capital have shown – and I quote – “tireless commitment to the protection of the rule of law at both the institutional and judicial level in Poland”. The award will be handed to their dean since 2016: Mikołaj Pietrzak, a man of many virtues and accomplishments (national and international) .

On the slide behind me you can see a cartoon drawing of the comic strip "De Rechter", well-known in Dutch circles of judges and lawyers, about the situation in Poland

The text reads:

Our correspondent looked around the Constitutional Court. Um, that statue...isn't her head attached a bit oddly? Yes, we wrung her neck.

It seemed an appropriate picture to illustrate the serious democratic backsliding and breakdown of the rule of law that has been going on in EU member state Poland, since 2015 after the government came under the leadership of the PiS party.

¹ Jury includes representatives from:
L'Observatoire des Avocats IDHAE, UIA, Federation Barreaux d'Europe, Ordre des avocats de Genève, Union for the Protection of Human Rights Rome, Barreau de Bruxelles, Ordre des Avocats du Barreau de Luxembourg, IDHBarreau de Paris / Ordre des avocats de Paris, Rechtsanwaltskammer Berlin, Amsterdamse Orde Van Advocaten

The next slide shows at a glance the different RoL infringement procedures launched by the Commission against Poland. At least that was until on the 8th of June a 6th infringement procedure was launched regarding the “lex Tusk”.

As said: serious backsliding of the RoL in this EU-memberstate.

Can you imagine what it is like be a lawyer in Poland where the whole judicial pyramid has been seriously compromised by the increased influence of the executive and legislative branches on the functioning of the judiciary?

Since 2015 the Constitutional Court has been taken over at first by letting the then parliamentary PIS majority fill positions of seats in the CC that had already been filled, in breach of the Polish constitution and subsequently filling the vacant seats with PIS-candidates.

The Supreme Court’s position as a ‘court established by law’ has also been weakening in recent years. One of the main reasons is the introduction of unconstitutional changes regarding the appointment of judges to the ordinary courts and the Supreme Court and the politicization of the new National Council of the Judiciary. This means that the rulings issued by the so called ‘neo judges’ (so those appointed by the New Council of the Judiciary) cannot constitute binding decisions about the legal position of citizens. 51% of the Supreme Court already consists of neo-judges.

At present about 3.000 so 1/3 of all Polish judges is a neo-judge. So of course there are still correctly appointed judges that guarantee that some of the cases of citizens can still be handled by a court that complies with constitutional, European and international requirements. But this lack of certainty on the part of citizens as to *who* will hear their case is the biggest threat to the trust citizens should be able to have in the legal system.

Muzzle law

On 5 June 2023, the Luxembourg Court of Justice issued its fourth infringement judgment in relation to the so-called muzzle law – which aimed

to dissuade or punish Polish judges for applying and upholding EU rule of law requirements, and thus from reviewing (where appropriate by referring questions to the EU-Court for a preliminary ruling) the unconstitutional judicial appointments made by the neo- Council of the Judiciary

It is no surprise that the Luxembourg EU-court ruled that national judges *cannot* be disciplined for reviewing whether a court is “established by law”

Poland’s muzzle law was immediately severely criticised by law professors, NGO’s, judicial associations, the Venice Commission, and the European Parliament. And it also led to public protests, including on Saturday the 11th of January 2020 the “March of One Thousand Robes” an unprecedented act of international judicial solidarity which gathered judges and lawyers from more than 20 countries.

Judges for Judges, myself included, joined this impressive march, which started in front of the Supreme Court going through Warsaw's streets towards the Sejm (lower house of parliament).

Meeting the Dean

On Sunday, the morning after the Thousand Robes march, we met with Warsaw’s dean in the hotel lobby.

Several people had indicated to us that he was the man to talk to for a broad view on what was happening in Poland regarding the Rule of Law crackdown. We spoke about two important Polish initiatives: Free Courts and KOS

Free Courts, founded in 2017 by 4 lawyers in defence of the independence of the judiciary and explaining in creative ways why that is so important for every citizen.

Kos; Justice Defence Committee, established in 2018 uniting NGOs operating in the area of the protection of human rights and the rule of law, as well as judges and prosecutors associations. Their aim is providing legal aid and moral support to repressed magistrates in national and international court procedures (picture: Judge Piotr Gaćiarek,)

But the Dean also outlined to us what all these so called “judicial reforms” would lead to. And he was very clear about that: legal chaos!

Why?

Well, because of the growing number of neo judges appointed. These neo-judges alone or in a panel, issue numerous rulings every day, which can be undermined and appealed against, among others to the Strasbourg Court. So also creating huge execution problems, which is not conducive to legal certainty and trust in the state.

And as you said in a podcast a few months ago:

It really does require a lot of imagination on the part of civil society to understand that the removal of the procedural safeguards is an extremely grave and dangerous situation and that it inevitably leads to an undemocratic State.

Logo of the March

Back to the March, you will find the Dean on the right, behind the banner stating: *'The right to independence. The right to Europe.'*

Some of you might recognize the typography.

Indeed the same typography as in the ‘Soldarinosc’ logo. The Polish trade union movement of the seventies and eighties of last century led by Lech Walesa that played such an important role in the resistance to the communist regime in Poland.

Its major strength lay in its unusually broad social alliance. It united all kinds of citizens regardless of background, beliefs or religion. Joining in was an expression of the desire for change in Poland. And that desire for change is something that links us to the present day.

So again a broad social alliance in Poland this time fighting for free and independent courts in line with European standards: to ensure that every citizen has recourse to an independent judge if they believe that their civil rights and freedoms are being violated.

What is then the role of bar associations in this uphill battle?

As the former Special Rapporteur on the independence of judges and lawyers stated:

Bar associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession and to ensure access to justice and the protection of human rights, in particular due process and fair trial guarantees. Bar associations have an important advocacy role in upholding the rule of law and promoting the equal and effective enjoyment of human rights

That is not a *no-strings-attached* assignment

Precisely because the profession of lawyer plays a central role in the administration of justice, the defense of human rights, democracy and the rule of law it is also that lawyers nowadays, both individually and institutionally, are increasingly the target of attacks of all kinds.

In Poland we have seen lawyers targeted with surveillance (the Warsaw dean himself for example, see the case pending in Strasbourg), Polish lawyers have been targeted with disciplinary measures for the statements they make in court which are critical of politically appointed neo-judges.

Therefore it is good that the Council of Europe is working on a new legal instrument aimed at strengthening the protection of the profession of lawyer.

I come almost to the conclusion of my talk.

Of course judges and lawyers have different roles to play in the legal process. But the independence and impartiality of the judiciary and the independence of lawyers and the legal profession are both necessary elements and therefore also the contribution of both professions is essential in the realization of a democratic state built on the Rule of Law providing equal access to justice for all.

It is important that this award be given. It is a sign of moral support to those colleagues who, even under the most difficult circumstances, stick their necks out and continue to be guided by their core professional values. But at the same time it is also a moment of inspiration for all lawyers as members of European bar associations to reflect on the European values and what their task and role is in society.

Mr Dean, when you were interviewed (for Prawo in January 2021) and asked to reflect on your first term as a dean, one of the things you said was:

we have shown the advocacy from a good, pro-social side, necessary to protect rights and freedoms. We have become a partner for non-governmental organizations (and) journalists (...). We have regained public trust - this is the most important thing.

The lawyers from the Warsaw bar play to this day an incredibly important role in tackling the breakdown of the rule of law in Poland. They are rightly applauded for this.

In an interview in 2020 you said:

When I became a lawyer, I felt as if I had grabbed God's legs,. I believe in the bar, this is my life and I never believed that I would become the dean of the Warsaw chamber.

Well here you are and it is therefore that this afternoon the special jury award for Bar Association of the Year will be presented to you as dean of the Warsaw Bar Association.