

Central & Eastern European Judicial Exchange Network
Webinar Spotlight Series: Judiciaries in Peril in Central and Eastern Europe

Spotlight #2:
JUDICIARY IN PERIL: POLAND CASE STUDY
Tuesday 1 December 2020 Transcript

Speakers:

1. Judge Krystian Markiewicz, Attorney at Law, President of Iustitia (Polish Association of Judges)
2. Michal Wawrykiewicz, Attorney at Law, Wolne Sądy
3. Malgorzata Szuleka, Helsińska Fundacja Praw Człowiek (Helsinki Foundation for Human Rights)

Background: The term “judicial reform” as used in Poland has actually involved implementation of measures that undermine the independence of the judiciary. Many of the changes posed by the current ruling coalition, the Law and Justice Party (Prawo i Sprawiedliwość), have been criticized as undemocratic and harmful to the fair administration of justice, raising considerations and concerns about the judiciary’s capabilities to function independently in the country. Prawo i Sprawiedliwość came to power in 2015. In the period which followed, the legislature and executive authorities have gained significant control over the functioning of the judicial system. They instituted a process of restricting the powers of the judicial self-government, asserted near total control over judicial appointments, and increased the administrative supervision of the Minister of Justice over the courts. These changes, coupled with adjustments made to disciplinary proceedings, have resulted in a growing number of disciplinary proceedings, which are perceived as a way to pressure the judiciary and interfere in court proceedings and rulings.

[Transcript Begins]

Freda Grealy (FG), Program Manager: So, thank you again for joining us for this second in our Spotlight Series where we focus on the Judiciary in Poland. I'm Freda Grealy, I'm a program manager at the CEELI Institute based in Prague. I'd like to hand you over to Chris Lehmann, Executive Director of the CEELI Institute for a brief introduction — Chris.

Chris Lehmann (CL), Executive Director: Good evening, everyone and welcome to the Spotlight Series that's being hosted by the CEELI Institute. This is giving us a chance to look in depth at the perils and challenges that are facing judiciaries in some of the countries across Central and Eastern Europe. We were fortunate a few weeks ago to start with a look at the challenges in Bulgaria, one of the sleeper countries of the region that's not as well known, but today we're going to focus on the rather high-profile situation in Poland. We look forward in January to looking, taking a close look at Montenegro and we'll be following up with information on that. This is part of a larger program ongoing for a number of years at the CEELI Institute, which is our judicial network, which is designed

to support and strengthen the integrity the accountability the independence of judiciaries across Central and Eastern Europe. We want to acknowledge the support of this program from the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs, which has been an important partner in this effort — which is ongoing. I don't want to take too much time we are committed to honoring our one-hour slot. So, welcome again to the CEELI Institute and, Freda, I turn it back over to you so we can get on with the substance.

FG: Thank you, Chris. And as I said, we've three speakers this evening, and I'm delighted to introduce them. Firstly, we have Judge Krystian Markiewicz, he served as the President of Iustitia, the Association of Polish Judges since 2016. He's one of the leading voices in the current judicial protests in Poland against the force changes in the Polish Judiciary. He is the Court President in the Regional Court of Katowice, and an Assistant Professor in Civil Procedure, Department of Law Administration Faculty in the University of Silesia. And we have Michal Wawrykiewicz, he is the co-founder of the Wolne Sądy — the Free Courts Initiative. He's an attorney with his own practice In Warsaw, he serves as a legal consultant and author of expert opinions for the Parliamentary Research Bureau in numerous legislative processes concerning civil law and systemic acts. And we are also delighted to have Malgorzata Szuleka, she's the head of advocacy at the Helsinki Foundation of Human Rights in Warsaw, Poland. Her research and advocacy focuses on issues of the independence of the judiciary, threats to the rule of law, democratic backsliding, and international advocacy, other areas she deals with such as access to justice, fair trials, and the rights of vulnerable groups.

So, Judge Markiewicz will go first, he will address you all in Polish. Each speaker will have roughly 10 minutes in length, and then we will have time for questions and answers. So, Judge Markiewicz, I will hand the floor over to you. Thank you.

Judge Krystian Markiewicz (JM) (translated from Polish to English): Thank you very much for this opportunity to take the floor. For me, this is a very important initiative that we can speak about the situation in different individual countries. And in this way, try to find the right standards. This is a very important, especially in the context of the today's verdict, and the proceedings, which is taking place in front of ECG today. I will start with an obvious thing, which I think, which are common for many situations in Europe, but also gives us the reason why — that happened in Polish courts. We know that courts are the shields for the citizens from the dictatorship, they guarantee that will now slide into the tyranny of force. What I said explains why the governing party wanted to take over this the courts and politicize them. It has been doing that, because it wanted to have full control and to be enjoying complete impunity. I'll be speaking about these activities in Poland from the perspective of the court and the President of the largest court organization bringing together close to 4000 judges.

The first thing, which should require the decisions, which wasn't published for everyone, and for me, as the President of this Association was whether it is possible to make any concessions when it comes to rule of law — the change of the political power needs also that we change the governance structure in use Iustitia. We as an association, we are not a political body. Despite any attempts, we were not bought, or we're not intimidated. We charted a very clear cause to fight for the

independence of judges, and we wanted to support our cause and keep in touch with the society. We were explaining why the courts are so important, and what it means for retiree, for teacher, for a student, we've been doing that with other lawyers from NGOs. The President of Parliament, the government, the political power, wanted to convince the society that the judges are the caste, that they are thieves. Yes, that's right. This is how they were referred to politicians with state run foundations, state owned companies, public media started and concerted media talk with billboards on the streets, which was coupled with the attack of haters which was conducted by the high-level officials from the Ministry of Justice. It was in such atmosphere that individual elements of the justice system and in Poland was taken over. They started with the Constitutional Tribunal; the fight was very short. The politicization of tribunals is a great weapon in the hands of politicians.

So, the first question is — what is the standard of constitutional courts in Europe? I think we have to take a look at this — I will be speaking about the standards later. Another element of taking over of the justice system was the National Judiciary Council. In Poland, it should be a guardian of the independence of courts, and it is a fundamental body when it comes to nominating the judges and their promotions. National Judicial Council, its time was shortened. Also, what was changed? Was that procedure how, people were nominated to this council. It's no longer the judges who are nominated people, but the Parliament of the politicians in this way what happened. That the judges have no say in nominating other judges.

So, the question, again, is, what is the European standard? When it comes to the current verdict of the European Court of Human Rights? What does it mean that the code is legal and the charges are legal? Should we? Well, I have to add that almost all the chairs of the individual courts were replaced. Mediocre people were nominated, who were ill prepared, and they were taken from lower courts, and only the Supreme Court stayed longer independent fight lasted longer thanks to the support of ECG for example. But the Supreme Court was also practically taken over by political operatives, newly appointed judges under the new procedure — they're fine for them. Supreme Court showed us that we are not alone in this struggle, we initiate initiated operation of the light chain — you may remember the pictures that people wear with the candles, people with their mobile phones to create this chain of light. More than 200 cities in Poland, several hundred thousand people protested in order to protect the independence of the courts. It was a very important element to show to the political power, that the problem of the cause is no longer an original problem.

Polish judges from *Iustitia* continue to fight for the independence, we questioned the nomination of the judges to the Constitutional Tribunal, to Supreme Court, to other courts, we're talking about violation of the rules. The politicians wanted to silence us so they created a new system of penalizing the charges. They introduced the new disciplinary and penal measures. It was today that ECG was deliberating in this matter. It was connected with the disciplinary procedures in Poland. Of course, the current disciplinary proceedings in Poland has nothing to do with just procedure, and the new disciplinary chamber is taking its cues and instructions from politicians. Similar comments, referred to the so called extraordinary *chambre*, which is deciding whether the election were legal or not. They can also say on other verdicts in Poland, they can actually undermine judges verdict. These

changes lead to the election of a new president, first President of the Supreme Court. It was illegal. It was managed by a newly appointed person, by the National judiciary Council, which was indicated by the President who is a politician. And when we had presidential election in Poland, the politicians had, in their hands, a new chamber of the Supreme Court, which was deciding whether the elections were legal or not. Despite the fact, that the Supreme Court and previously said that it is illegal. The repression machine started to operate in Poland.

We have several dozen judges who are under the disciplinary proceedings. But at the same time, we have several hundred judges appointed or promoted by the politicized and National Judicial Council, practically taken on the Supreme Court which is no longer independent. This is an argument of the Polish Minister of Justice, in front of ECG in Luxembourg, not to deal with this topic anymore, you should not go into it because it is too far reaching.

Let me now present some conclusion, conclusions. The freezing effect, the intimidation effect, is working on the Polish judges, and I have no doubt about it. If currently, for questioning the status of the newly appointed judges is either removing a judge or moving a judge — every judge will think twice whether he should take this risk or not. The Polish judges and perceive the operations of EU bodies as too slow and not effective. There are no clear declarations on the side of political bodies.

With regards to what to do with the situation whether we should question this, whether we should question the new judges of the Supreme Court, doesn't mean that we as Iustitia will cease to struggle for the independence of judiciary. Let me assure you, we are never going to do it, we are going to continue to fight and I hope that we will be victorious. Even today in Luxembourg, we have our representatives the judges who have removed or suspended, who no longer can adjudicate due to this special chamber, and we as judges, and set up the fund which supports them both financially and organizationally. Because when they are suspended in their duties, some of their salary is removed. So, we are fighting very stringently and strongly on the European level on the national level.

We are a meeting with members of society, we want to be closer to people in either under the pandemic conditions we want to be closer to people, in my opinion, it is that proximity with citizens, the dialogue between us and the society, also with the NGOs — is a guarantee of the independence of courts. Not even the best regulations, or some assurances from other branches of power. It is an aware society, bold judges, is this a real guarantor of the independence of courts. I

In my opinion, based on the EU, all the lawyers should be interested in working out some specific European standards. Take a look at today's test of three conditions of European Court of Human Rights in Strasbourg. Or the tests of six conditions of the Luxembourg tribunal, as a result of the complaint lodged by the Portuguese judges. This is in my opinion, something very important we as lawyers should encourage our estate to take part in the proceedings in front of the of the tribunal. On one hand, I was sorry to see that point was on once again on the agenda. But on the other hand, I had some hope that for many European countries, it's not something which is indifferent to them. That today, thee representatives of EU Member State were in Luxembourg and we're asking you for

the independence of the Polish and European courts. I'm also happy that this activity of European lawyers is contributing to making sure that also on the forum of the European Parliament and national parliaments, we do not leave Polish judges to themselves into their own devices.

I'm convinced that we all, not only in Poland, also in Bulgaria, in Spain, in other countries, we are going through a difficult lesson, but I very much believe that it will make it clear for us that we need to cherish and fight for this independence until we succeed. Thank you very much.

FG: Thank you so much, Judge Markiewicz for that very interesting overview and some insights into the pressures that judges are working under in Poland. I'd now like to invite Michal Wawrykiewicz, from the Free Courts Initiative to take the floor. Thank you, Michal.

Michal Wawrykiewicz (MW): Thank you very much ladies and gentlemen. Judge Markiewicz perfectly described this short, but very intense story of the destruction of Polish rule of law. And of course, we could add many, many, more stories, and we could describe it in detail. But of course, we do not have time within these 10 minutes to do that. But having that in mind, I would love, rather like to share with you my reflections, my impressions about what happened in Poland throughout last five years. Because I believe and I'm more than sure that this is a very good lesson for Europe. Because what in Poland, what happened five years ago, that was the seed of populism that was being so slowly and finally gave its fruit. And to be honest, we were shocked five years ago, in autumn 2015. When I was watching TV, and I saw when the parliament started their attack, of course, the majority, ruling majority in the Parliament started their attack on the Constitutional Court. Because we had 30, more or less 30 years of our democracy, 30 years of independence, and we never observed such a situation where the ruling majority, ruling party is attacking so obviously and so openly the Constitutional Court. And that was the that was the first sign what is going on because, of course, no authoritarian regime likes to be controlled. So, their first task was to destroy the independence of Constitutional Court, to be able to do whatever they want, to be able to pass any law through the Parliament without any constitutional control and finally took them in one year, because that battle for the Constitutional Court ended in December 2016.

And that was the first victory of government power in in this in this war. And as it appeared in the future, that was a very important step in that war. Because now and throughout last four years, they are using Constitutional Court as their ally if they need to legalize anything, what they are doing in a legislative matter, they are just sending the motion to the Constitutional Court. And the Constitutional Court which is completely taken over and completely obedient to the ruling majority is issuing verdicts and whatever, whatever the government wants. So, that was the first lesson that we took within the first year.

And my impression is that we should be vigilant, we should take care of our democracies, we should not take everything as granted, once and for all. Because we should care for our democracies and for our European identity, like taking care of our, let's say, our beloved car, which needs to be checked regularly. And which needs to be checked whether everything is working in order, whether all screws are in place, or whether all mechanisms are lubricated. If we do not do that, and then the accident,

accident can happen immediately. And the accident happened to Polish democracy, democracy. Even if we were very much shocked, and we were very much surprised. Because we believe that after 30 years of constructing these democracies, constructing the legal system, the safety nets of our citizens, I mean, the safety is from the constitutional point of view, from a human rights point of view — we believed that our system is safe. And we believe that the constitution grants us, citizens, that we are safe, safe from authoritarians, and that we are safe from populism and such an open violation of the rule of law. Unfortunately, it happened that we are not safe.

And as I said, that was, that was our lesson, that the party which is known as law and justice — which sounds a little bit funny in this context — that party law and justice gave us, gave us this lesson. But what we learn from that lesson that, as Judge Markiewicz said, that the most important is that we stand together — lawyers and citizens, prosecutors, judges, attorneys, advocates, everyone are staying together like brother's knives in this battle.

And as Krystian Markiewicz said, I believe that we will win this battle very soon. And, we will be able to treat this time this five years in our history as a vaccine for the future. And it is not all only vaccine for us, for Poles, this is vaccine for the whole Europe. Because when we are looking at what the institutions of the European Union are doing right now, when they are preparing these new regulations firearms, and the rule of federal protection, and we can see that, that the European Union also learned that lesson from Poland and from Hungary especially. And if they realized, that the instruments that European Union have in their hands are not sufficient, are not enough, the article seven procedure is only theoretical procedure that cannot give expected effects, unfortunately. They realize that the procedure infringement proceedings in the European Court of Justice is not sufficient and it's not effective, as effective, as we would expect. Because, of course, many, many things happened in that European level, very good things happened in that European level for us, but he didn't stop the destruction of the rule of law in Poland actually.

As Krystian described you, we have all areas of the judiciary, all areas of the rule of law completely destroyed right now in Poland from the systemic point of view. The whole independence of judiciary is on the on the hands of Polish brave judges. They are, they have these very heavy task on their, on their arms and, and the European Union continually, and they learned that actually they need new instruments, they need new tools to stop a destruction of the rule of law in a one-member state. And they also learned that the destruction of the rule of law in one-member state can destroy the whole system, the whole common European area and that's why being able to prevent such a distraction in one-member state is so important for the whole Europe.

So, at the end, I would like to say that I am looking forward and looking in the future positively, because I believe, like I said, that this will be a good lesson for Europe and that will be something that will strengthen us for the future. Thank you very much.

FG: And thank you, Michal for your views and your observations — most interesting. And I would now like to invite our third speaker Malgorzata Szuleka from the Helsinki Foundation, if you would please take floor. Thank you.

Malgorzata Szuleka (MS): Thank you Freda and thank you to the entire CEELI Institute for organizing this extremely timely and important discussion. Timely and important not only because there are always some new rule of law developments in Poland. But also, I think, it's wonderful coincidence that we meet at the first of December, when there were two important developments in the proceedings before the international courts, namely the hearing in the Court of Justice and the decision of the Strasbourg Court.

There were already my interlocutors, Judge Markiewicz and Michal Wawrykiewicz said a lot about the changes in the Polish judiciary system. So I'm not I'm not intending to repeat what has been already said. Instead, I would just like to revert the perspective a little bit and look at these changes from the perspective of human rights lawyer and also common citizen who has to address a case to the Polish Common Court in these days.

So, as Judge Markiewicz brilliantly summarize, there were 20 different pieces of legislation adopted by the governing majority in last five years concerning the functioning of judicial and judiciary system. To the contrary of what the government was saying, none of those changes actually improve the situation in courts. In reverse, they actually slow down the pace of the of the proceedings, also deepen the case and the administrative case in the court, and most importantly, influenced the legal certainty of the decisions being made by the court.

I just want to focus on two issues, so on the consequences of those changes, and secondly, I just want to do this intellectual exercise to actually look a little bit into the future of what is ahead of us.

So, coming back to the first point when it comes to the consequences of the rule of law crisis for the common citizens. I would like to name three of them. So, the first one is the lack of the legal certainty. As Judge Markiewicz said, one of the cornerstones of the changes in the judiciary system was taking over the National Council of Judiciary. However, it was done in such a sloppy and messy way from the legal perspective, that after two years of those when those changes were implemented, still, there are doubts regarding the composition of the Council and also its legal legitimacy to issue decisions. It wouldn't be a problem if the National Council Judiciary was just yet another administrative body. However, the National Council of Judiciary is the body responsible for appointing and promoting judges.

So here comes all of those elements of this perfect storm comes together, come together. So, on the one hand, we have legal doubts regarding the composition and the appointment of the members of the Council. But in extent, so we have legal doubts regarding the decisions being made by the authority in such a body, in such composition, and that means that there are legal doubts regarding the decisions being made by judges who are appointed by this council.

This is a subject that was reported and documented by numerous organizations and many legal articles was already, were already written about these problems. And also, the Supreme Court made a resolution that was concerned this particular problem. Still, there are from the common citizen perspective, there are doubts if I address my case to the court, whoever I'm going to receive the binding decision. This problem also perfectly manifests in the case of the constitutional tribunal

where yet again, the governing majority in their uncontrolled desire to capture this institution, make many of the rookie mistakes, and for example, appointed three persons for the position of a judge without the legal basis.

That means that they're three persons sitting on the bench of the Constitutional Tribunal who should not be adjudicating. That means, again, that there are legal doubts regarding the decisions of the Constitutional Tribunal. And the consequences of this capture, we could observe right now in the streets, in the cities of Poland, when many, many people took it to the streets, in protest against the latest decision concerning the abortion law issued by the Constitution Tribunal.

Just to add insult to injury, I will just mention that even though the decisions of the Constitutional Tribunal are binding and final, so the government delays on purpose and the process of publishing the judgment of the Constitutional Tribunal, hoping that the some sort of a delay would come down the social tensions around those issues.

The second thing is the problem of actually obtaining the decision because in in the proceedings before the common courts. For two years, the Ministry of Justice, again on purpose, blocked the process of appointing the new judges or promoting the judges that led to a skyrocketing number of vacancies across the common courts. Reaching at some point almost the number of almost 1000 vacancies across the country that significantly slowed down the works of the courts, and again, added problems to already existing problem of the excessive length of the proceedings.

However, the Minister of Justice seems to be much more interested in widening the political control over the common courts instead of actually hearing the main disease, which is the problem of a relatively slow pace of works of the common courts. And finally, our deferred outcome I see it's just outside the liberal bubble. But this is the highest cost of those so-called reforms we are going to pay.

In five years, we've been observing massive, massive attacks and pressure on the judiciary system, especially on judges. And that translates into lowering the public trust towards courts and judges, as such, those figures changed over the years. They are still after so many years of the attacks on judges relatively high, they reached a little bit less than 50% of support, which is, by the way, twice as much as public trust to the parliament, which is around 21-22% according to the latest research. Still, it's relatively low in the 30 years of building the democracy in Poland as Michal summarize it.

Another element we're going to see, and another consequence we are going to see, is the chilling effect among judges. We still can say that courts in Poland are politicized. However, as Michal said, right now, there is no currencies of the independence for judges. The independence depends only on the courage, moral integrity, and the knowledge, and nothing else.

Now, coming back to the second point I wanted to raise when it comes to the way forward, I see two main developments that are still ahead of us.

So first of all, Minister of Justice isn't going to stop the changes in the judiciary reform. Last week, Minister of Justice said that the ministry is still working on the federal plans to change and the

judiciary system. That means, that for example, they could come back to one of those projects they have for a long time in mind concerning the so called flattening the structure of, of the judiciary system in Poland. This could be used as excuse to vet all of those sitting judges across the countries, across the country courts.

The second development that may create certain backlash, are the jurisprudence of the international courts. I assume that we'll see a raising number of complaints from Poland concerning exactly Article six of the Convention in the terms in which it provides the access to the court established by law. This case will be sooner or later, but still will be decided by the European Court of Human Rights.

The second problem, which is much more worrying in terms of a kind of backlash at the national level is the jurisprudence of the Luxembourg court. If we look at the latest developments, we see that every time the court in Luxembourg is going to adjudicate in the case of Poland, there is always certain response from the Polish government that aims at anticipating the consequences of the [incoherent at 41:06] decision.

The latest examples, for example, is the muzzle law. When the European Court of Justice issued a decision that obliges the National Court to verify the status of the judge appointed by the National Council of Judiciary, I'm simplifying the main points of the judgments just for the sake of the clarity of my presentation today. But when that such a signal came from the Luxembourg court, the worst response was to ban the possibility to actually verify the status of judges.

And I just want to conclude right now by echoing what Michal said, that diffracted democracy, after five years of the rule of law crisis in Poland, we learned a lot. And we learned a lot about the professional solidarity, and standing behind each other in support for the rule of law. However, this is just my final warning for the international community. The worst thing you can do for yourself and for your country is to believe that what happens in Poland or Bulgaria can't happen in your country. It can happen everywhere, and it's the role of lawyers and all the legal professionals to be aware of the threat. Thank you very much.

FG: Thank you so much, Malgorzata. Ending on that very sobering note there. So, we do have some questions. And so, the first one I want I want to touch upon and Judge Markiewicz, you also mentioned this in your presentation about the role of the media, and the effect they have in manipulating public opinion of the courts and judges. And we know these days as well, social media is also a big thing. And I mean, it must be very confusing for the public, because these are very complex issues. And there, there is a question on this point, and I'll just paraphrase a bit, but basically, it's around building public trust in the judiciary, and how do you get the public on your side and against the political reforms that are there?

And what could you know, what kind of actions has Iustitia taken, maybe Michal and Malgorzata, you can outline some of the actions, as well, that you have taken to actually try and try and reach the public and to try and get your hand, you know, your voice out there. So perhaps, and j Judge

Markiewicz, I'll begin with you, if you don't mind. How do you build, how do you try and build public trust in this very complex situation?

JM (translated from Polish to English): Well, thank you very much for the very question. I will start by saying that this resistance is possible, thanks to a great cooperation with NGOs, with lawyers, with defense lawyers, which I hope is confirmed by what Malgorzata and Michal said. Even though before we didn't consolidate who should speak about which, I think we're quite compatible, we are on the same page.

Well, the public trust, as I said, and a matter of cooperation and public, social legitimacy is crucial. Iustitia, fortunately, a couple of years before law and justice came to power, started some educational campaigns for youth. for children. And what Michal has said today, that one should fight for rule of law every single day — it's not too be taken for granted. These words are in the book, which was published in 2014. And we were trying to make people aware of this threat maybe too late, maybe it came too late. But I think that, for me, this necessary educational campaign for children, for youth, for students, maybe also for other social groups, as a Sine qua none condition. And the second thing is, of course, social media. And they're all because the question is, what do we have left under the circumstances? If the public media are hitting every single day at us, at lawyers at rule of law, at judges. There are even this new par- documentary TV series on judges, how egregious their behavior is, how much alcohol they drain. On the billboards, you can see that a judge has stolen a piece of sausage or trousers.

So, we are paying a lot of attention to social media. Please take a look at the Iustitia website. Take a look at our Twitter, at our Instagram account, on our Facebook account. We are trying to stay up to date and we are trying to update the content, we are trying to get to the younger groups of people.

This is a very, very important, we are very pleased that our reach is increasing, and we are able to amplify the message. Of course, it influences the trust of the public, Malgorzata has said that this trust has decreased. I took a look at the data and what transpires is that it was much larger in 2014. But after two years of this massive, massive campaign — political campaign — it was much, much lower. And right now people are realizing that the courts are important for them. And so, we are going a bit up. And this trust to the court is higher than two years ago. It shows that we can, and we need to continue to struggle to convince the society that the courts are for them, that the courts are for the people, and the courts are not an abstract institution of the space.

So just the final sentence, and the fact that the courts are working worse than in the past and to show the perfectly of the Minister of Justice. Let me tell you that under the cover of the so called Covid Act, the Minister of Justice, introduce stipulation barring the publication of data on the number of cases which are being adjudicated. Because currently, it takes three times more time than in 2014 in a nutshell. Thank you.

FG: Thank you Judge. Malgorzata, can I go to you? And maybe you might, what in your mind are effective mechanisms for trying to get the message across to the public what can be done.

MS: I'm afraid I'm not going to reinvent the wheel here. I just went to echo to what Judge Markiewicz said and just to share with you with my observation from the other side of the bench.

First of all, the judges in Poland, with some remarkable exceptions like the judges from *Iustitia*, were never trained in social communication; They were recruited to be judged and to adjudicated in the courtroom. And we have to always praise those judges to actually take it to the streets to find, the language of the protest that on the one hand, shows the importance of protecting the rule of law, but on the other hand, is still in line with the judge of his dignity. And I think with what *Iustitia*, and also [incoherent] associations, but many other, anonymous judges across Poland, it is absolutely remarkable in the European scale, to actually raise those problems and explain it to the wider public why it is important to protect the fundamental values. And most importantly, it does not mean any sort of political engagement.

But on the other hand, I just want to raise why it is so difficult to actually make your message come through. And this is something we observe not only in Poland, but in many other democracies right now, deepening polarization of both society and the media.

The problem is right now that the media landscape is strongly polarized and if we have on the one hand, the public media, which is nothing else, just a propaganda tube coming hand in hand, in the smearing complaints against judges. On the other hand, we saw certain private media outlets who are much more interested in covering the issues related to the rule of law, yet they are not perceived as the objective by, let's say, the other camp here.

So, I just want you to repeat what the Judge Markiewicz said that I think that the direct communication and the social media platforms that allow such a communication that might be a key. However, we have to be prepared for a long run because the open and in this, let's say, discussion, but it's not like discussion, it's like someone was, I know, hitting you with a steak on your head. It's just the resources on the other side are much, much bigger than what we can expect. So, I think I think they resistance and like a strategic goal oriented are the keys here.

FG: Very good, thank you. And Michal, is there anything you'd like to add?

MW: Yes, I would like to, of course, I agree totally with Krystian and Malgorzata regarding the importance of this communication and media communication. And this is how we, Free Courts Initiative started. Because in 2017, when huge protests on the street started and, actually, we realized that these crowds do not fully understand why the independence of the judiciary is important for them.

That was the abstract issue, and in our idea, our concept was to provide them stories in a form of short videos, [incoherent] why the independence of judiciary and three partial powers is important for each citizen. And we engage famous people, like actors, directors, famous lawyers, doctors, and so on. And, and they played in these short films. And they tell they were telling these stories. And that's how the reaction of the city was focused on that films. And that's how we started our activity.

And another example of forgive good education throughout these last five years, is program prepared by Association of Professor Holda this is constitutional week. This is the program for children, and it takes place every half a year. Around 550 thousand kids are taking part in this program, and around 600 lawyers from all over Poland are taking part in this program, of course, pro bono. And this is fantastic. And it shows us, who are taking part in this program, that the education on the basic level regarding Constitution, regarding European standard is so, so important. And without such an education, common Europe will not survive.

FG: Thank you. Michal. It's interesting in our previous spotlight as well, when we were dealing with the judiciary in Bulgaria, the theme of education and public legal education. That was also something that was mentioned as very effective in terms of getting messages across. Judge, in relation to Iustitia, the organization. And there is a question here and I suppose it's something that you have maybe come across in the past. And the question is do populist in power, accuse your organization of being under foreign control for speaking against the government?

So, is that something that you've had to addressed before? And your answer would be?

JM: Yes, this is quite accusation which is called street and abroad. So, we as judges, are facing this kind of accusation. Which is connected with both the street protests and the participation in such meetings as this webinar, this international webinar. It is nothing out of out of ordinary that study visits.

For example, my colleague, [incoherent] colleague, she's facing some disciplinary procedures because she took part in a study visit. Or maybe some judges who are going to the music festival. When they youth, they face some disciplinary charges. Pretty much any kind of activities, we can face some disciplinary proceedings.

About three years ago, we would go to Brussels for some official study visit, before we came back two weeks later. In the public media, there was a list of that participants, the judges, who partook in this Brussels trip, so this is a permanent element of accusing us.

And there is another important element, everything that we do. Irrespective whether it's me, Michal, or Malgorzata, if we speak about rule of law, it is deemed a political activity, it is deemed political. Our fight for the rule of law is for the government and for the public media — a political activity.

I've been in Iustitia for a couple of years. I was there when the current opposition was in power, and I was fighting equally tough for the independence of the court. And, of course, it was not as intense as right now when the challenges are bigger. But this is something that we have to face, we have to be prepared for such attacks. But there are some attacks on private life, your family, your loved ones. This is the price that we are all in carry, and all pain.

Also, the Polish ombudsman, the term of whom is coming to an end, and he's a great beacon of independence, Poland. We fully realize this price and we are fully ready to shoulder it, [incoherent] a Judge, who is today in Luxembourg, probably [incoherent], another remove charge. They have been paying their own price. And they have been they've been smeared for the errors that their parents might have committed in their lives. So this is really the picture. Thank you.

FG: Thank you for that. And I'm just going to squeeze in one final question here because it's come up in one or two places. So, as you mentioned, there are quite a few people on this call who are, there some from the region, I know we've many judges from Iustitia as well on this call. So, we're delighted to have them. But in terms of the international community, and people from abroad, what can they do to support judges in Poland? So, I put that one to you first Judge Markiewicz.

JM: Well, in my introductory address, I thanked for every act of solidarity. I will never forget, the march in Warsaw, organized by Iustitia. I will never forget the march when we had representatives from the EU. It was the march of 1000 judges or lawyers, matter very much for Polish judges. It wasn't just one march, it wasn't just one demonstration, I think it was there, it was then that something has started. And this kind of solidarity act is very important. And activity of lawyers, in various associations showing this kind of solidarity act, or our joint letter to the European Commission, which is published on the Iustitia website when the lawyers are making an appeal to the European Commission to act in a decisive manner.

I'm so glad to we have signatures from more than 20 countries, through the social media, through this internal contact with judges, which is very important, which is equally important as a contact with the society. We are reaching out to other judges from other countries. And it is very important, what we should focus, and this meeting is a great proof, we need to cooperate, something which is missing, I think.

In order to work out with some standards to make sure that we will come up with our own rule of law and report prepared by us. European Commission also has prepared such a report, but they had to make some commissions politically. And I think we lawyers should come up with our own rule of law report, which is crucial for the future of rule of law in Europe.

FG: Thank you and Michal, how can I ask you if you have any opinion on what the international community, what they can do to support judges?

MW: Today, we have, because that solidarity on this level, which described Krystian on this symbolic level, is extremely important for us and for judges. But today, we had a fantastic example of solidarity on that governmental level, on that state level. We had a hearing in the European Court of Justice, where there were five collateral interveners. I mean, the states, Denmark, Netherlands, Finland, Belgium, and so each of them expressed their solidarity in us as a tool in the proceedings, in the infringement proceedings started by the Commission. That is, that is the support that is the support that we need. That is a support that Polish independence of judiciary needs.

And the second example is what the Dutch Parliament did today. They issued the resolution that they are going to start their infringement proceedings against Poland, in the matter of Polish rule of law, that is also the support that we need. That shows that we are the European community, and we cooperate and we need such a cooperation, not only in Poland, but for the future of Europe.

FG: Thank you, Michal, and Malgorzata, can I ask if there's any final comments from you?

MS: Yeah, just very, very brief one I agree with what has been already said. And just want to add one more thing to that if you really want if you want to do something for the judiciary in Poland, put a pressure on your national government within the EU.

There are lots of things, there lots of initiatives being taken by the European Union or Council of European institutions. But I think the defining moment for the next two and three years will be actually the single member states talking about the situation in Poland and internalizing this the rule of law crisis important also into the domestic efforts of the European Union member states. The launching of the proceedings on the basis of Article 2 and 259 before CJ EU is another step to go but also joining the pending preliminary requests proceedings. So, then proceedings started by the Polish courts. But also taking a very firm stance in the process of budget negotiations right now and defending the conditionality mechanism. These are some of those elements that could be helpful.

However, I just want to end with another sober observation. None of us think that the salvation would come from Brussels or any other European capital. We know that the change is should be raised from within and from the national from the national level, and I can reassure you that we keep working towards that goal. However, it's always it's always easier with that kind of support. Thank you.

FG: Thank you so much. Well, and that's all we have time for I'm afraid. I just want to thank everybody who watched, who tuned in for this evening. Thank you so much for your support and for attending. I want to give very personal thanks to Judge Markiewicz, to Michal and to Malgorzata. We really appreciate your time. That was hugely informative.

I also want to thank Judge Natalia Maszkiewicz for her assistance. She's a member of our Core Judicial Network here at the CEELI Institute. and she assisted us in putting this panel together. So, everybody, we hope you can join us at our next event, which is on January the 26th. And we're going to focus on the Judiciary in Montenegro then.

So, until then, thanks everybody. And we look forward to seeing you online and hopefully in person in the not too distant future. So, stay well and thank you very much again for your time and efforts.

Goodnight.

[Transcript Ends]