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December 2025

The *Wałęsa v. Poland* Judgment in the Context of the Ongoing Judicial Crisis in Poland

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I. Introduction

The year 2015 marked the beginning of extensive reforms of the judiciary and justice system in Poland, closely linked to the victory of the right-wing Law and Justice party (PiS) in the October 2015 parliamentary elections¹. The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe explicitly stated that these reforms, in numerous respects, run counter to European norms and standards. Taken together, they undermine and seriously damage the independence of the judiciary and the rule of law in Poland. Moreover, the reforms have made the judicial system vulnerable to political interference and attempted to bring it under the control of the executive, thereby challenging the very principles of a democratic state governed by the rule of law².

First, the PiS government jeopardized judicial independence by pursuing reforms that would allow the executive to control the appointment, promotion, and dismissal of judges at all levels of the court system, including by enabling the removal of sitting judges. The government also obstructed the work of the Constitutional Tribunal, the body tasked with ensuring the compatibility of laws with the Constitution, by refusing to implement several of its judgments issued since November 2015. At the same time, it politicized the composition of the Tribunal by declining to acknowledge lawfully appointed judges and instead appointing its own preferred candidates. Collectively, these actions seriously undermined the independence of the Constitutional Tribunal, weakening a crucial safeguard against governmental abuse of power and diminishing protections for democratic institutions and fundamental rights. Further reforms targeted the ordinary courts. New legislation empowered the executive to dismiss and replace presidents of common courts without justification. Simultaneously, the government advanced a bill requiring judges of the Supreme Court to retire early unless granted permission by the executive to remain in office. Additionally, amendments to the Act on the National Council of the Judiciary (KRS), responsible for safeguarding judicial independence and overseeing the appointment of judges, shifted the power to appoint its judicial members from judges themselves to the legislature³.

¹ <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>

² <https://pace.coe.int/en/files/28330/html>

³ <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>

In view of these developments the Monitoring Committee emphasized that its concerns regarding Poland's compliance with the rule of law have implications that extend beyond Poland's domestic sphere and directly affect Europe as a whole. For this reason, the Committee stressed that the situation cannot be regarded merely as an internal matter. It therefore recommended that all Council of Europe member states ensure that, before their courts transfer the defendants to Poland or rely on Polish judicial decisions in any criminal or civil proceedings, they verify whether the persons concerned will be afforded fair trial guarantees as required under Article 6 of the European Convention on Human Rights. This obligation reflects the need to safeguard fundamental rights across the entire Council of Europe, particularly in light of the systemic threats to judicial independence identified in Poland⁴.

This report focuses on one of the most concerning elements of the post-2015 judicial reforms: the establishment of the new Chamber of Extraordinary Review and Public Affairs (CERPA) within the Supreme Court. The chamber, composed entirely of judges appointed through the newly reconfigured National Council of the Judiciary (KRS), was granted far-reaching powers, including the authority to reopen final and binding judgments through an extraordinary appeal procedure. This mechanism, accessible to key institutional actors such as the Prosecutor General, has raised profound concerns about legal certainty, separation of powers, and the stability of the justice system. It has been widely criticized by national and international bodies, including the Venice Commission, which warned that it poses a serious threat to the integrity of the Polish legal order. Against this backdrop, this article examines the European Court of Human Rights judgment in *Wałęsa v. Poland*, analysing how the Court assessed the compatibility of this reform with the standards of judicial independence and the right to a fair trial⁵.

⁴ <https://pace.coe.int/en/files/28330/html>

⁵ <https://strasbourgobservers.com/2023/12/08/walesa-v-poland-a-forceful-culmination-of-the-courts-rule-of-law-case-law/>

II. Polish Legal and Constitutional Context

Article 179 of the Constitution of the Republic of Poland provides that “Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary (KRS)”. Under this constitutional provision, the submission of a motion by the KRS constitutes a *sine qua non* condition⁶ for the President of Poland to exercise the prerogative set out in Article 144(3)(17) of the Constitution⁷.

The purpose of establishing the KRS in 1989 was to create a body independent of political authorities, tasked with safeguarding judicial independence⁸. However, these principles were undermined by the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, which introduced a new procedure for appointing judges to the Council. Until 2018, the 15 judges sitting on the KRS were appointed within the judiciary by various judicial assemblies. However, in 2017 President Andrzej Duda enacted legislation that transferred the power to appoint the judicial members of the KRS to the Sejm. As a result, since 2018 the authority to elect 15 members of the KRS from among judges has been vested in the Sejm (the lower chamber of the Polish Parliament), a legislative body. The legislation also immediately terminated the mandates of the Council’s sitting judicial members, allowing the Sejm to swiftly replace all 15 of them with its own appointees. As a result, the Sejm effectively assumed control over judicial appointments in Poland. This action was met with sharp criticism, and the KRS was subsequently suspended from the European Network of Councils for the Judiciary (ENCJ)⁹. In 2021, the ENCJ formally decided to expel the KRS. According to the ENCJ, membership requires that judicial councils remain independent from both the executive and the legislature. The ENCJ found that the KRS no longer met these standards, as it failed to safeguard judicial independence and did not defend the judiciary or individual judges against measures threatening their autonomy¹⁰. This change has been also widely criticized by both national and international bodies, including the Venice Commission and the European Commission, as it increases political influence over the Council. The Act has raised serious concerns as to whether such changes may constitute excessive deviations from international and national standards that courts should meet, particularly the essential attributes

⁶ A necessary condition without which something is not possible.

⁷ <https://www.sn.pl/sites/orzecznictwo/orzeczenia3/iii%20ko%20154-18-1.pdf>

⁸ <https://krs.pl/pl/o-radzie/historia/527-historia.html>

⁹ <https://judicature.duke.edu/articles/the-collapse-of-judicial-independence-in-poland-a-cautionary-tale/>

¹⁰ <https://www.ency.eu/node/605>

of judges sitting in adjudicating panels, namely independence, impartiality, and the independence of the court as a state body administering justice¹¹. Following the restructuring of the KRS, the Sejm lowered the mandatory retirement age for sitting Supreme Court judges. Had this measure remained in force, it would have enabled the newly composed KRS to fill the resulting vacancies with judges loyal to the ruling party, while forcing older members to retire. In practice, the change would have allowed the KRS to replace roughly 40% of the Supreme Court's composition. In practice, the reform forced 20 of the Supreme Court's 72 judges into early retirement. However, in 2019 Poland was required to reverse this measure and reinstate the affected judges following the judgment of the Court of Justice of the European Union in *European Commission v. Republic of Poland* (C-619/18). The CJEU ruled that the reform violated EU law and undermined judicial independence by breaching the principle of irremovability of judges, a cornerstone of judicial independence¹². Despite this reversal, PiS-aligned KRS still had significant opportunities to appoint new judges. Some sitting Supreme Court judges have expressed strong concerns over these appointments, with a few refusing to acknowledge the legitimacy of the newly appointed judges¹³. In fact, in 2022, 30 duly appointed Supreme Court judges issued a statement in which they refused to adjudicate in a mixed panel with so-called "neo-judges", i.e., persons appointed to judicial office by the President of the Republic of Poland at the request of the politicized KRS, formed under the amended KRS Act. The majority of legal scholars recognized that this council had not been properly constituted and have referred to it as the "neo-KRS"¹⁴.

Another key judicial reform was the introduction, under the Act of 8 December 2017 on the Supreme Court, of the extraordinary appeal - an exceptional remedy allowing final and binding court judgments to be challenged and reopened. Competence to examine these appeals was vested in the newly established Chamber of Extraordinary Review and Public Affairs (CEPRA), discussed earlier in the introduction¹⁵.

On 23 January 2020 the Supreme Court, sitting in a formation of the joined Civil, Criminal and Labour and Social Security Chambers issued a landmark resolution in which it stated that "a court formation is **unduly composed** within the meaning of the Article 439 § 1 (2) of the Code

¹¹ <https://www.sn.pl/sites/orzecznictwo/orzeczenia2/bsa%20i-4110-1-20.pdf>

¹² <https://www.dw.com/en/eu-court-says-poland-broke-law-by-making-judges-retire-early/a-49332774>

¹³ <https://judicature.duke.edu/articles/the-collapse-of-judicial-independence-in-poland-a-cautionary-tale/>

¹⁴ <https://oko.press/pilne-30-legalnych-sedziow-sn-odmawia-orzekania-z-neo-sedziam>

¹⁵ <https://www.prawo.pl/prawnicy-sady/co-dalej-ze-skarga-nadzwyczajna,533015.html>

of Criminal Procedure, or a court formation is **inconsistent with the provisions of law** within the meaning of Article 379 § 4 of the Code of Civil Procedure, also **where the court includes a person appointed to the office of judge of the Supreme Court on the recommendation of the KRS formed in accordance with the 2017 Amending Act.**” Moreover, it held that the lack of independence of the KRS leads to defectiveness in the procedure of judicial appointments. However, such a defect and its effect undermining the criteria of independence and impartiality of the court may prevail to a different degree when they concern judges of the Supreme Court. This is because a particularly high standard of independence from political authorities is a necessary condition for the Supreme Court’s proper functioning under the Constitution and for the effective exercise of its powers, which are of fundamental importance for individuals in a democratic state.

As regards the Chamber of Extraordinary Review and Public Affairs (CERPA), the Supreme Court emphasised several crucial concerns. It noted that all individuals who applied for judicial positions in the Supreme Court under the new appointment procedure must have been aware of the profound doubts surrounding the legality of that procedure and the status of the KRS constituted under the 2017 amendment. They were also aware that the KRS’s resolutions recommending candidates for appointment had been challenged before the Supreme Administrative Court and, in many cases, suspended. Despite this, they nevertheless accepted their appointments. The Supreme Court further stressed that, due to the organisational structure introduced by the 2017 Act on the Supreme Court, CERPA is composed exclusively of judges appointed through this contested procedure. Consequently, a motion to recuse a CERPA judge offers no real guarantee of impartiality, as it would be examined by judges appointed through the same defective process and therefore potentially lacking independence and impartiality to the same extent as the judge concerned by the motion¹⁶.

¹⁶ <https://www.sn.pl/sites/orzecznictwo/orzeczenia2/bsa%20i-4110-1-20.pdf>

III. Background of the Case

The applicant Lech Wałęsa is the former leader of the “Solidarity” trade union, former President of Poland (1990–1995), and a Nobel Peace Prize laureate. In 2000, while standing as a presidential candidate, he was required under the 1997 Lustration Act to submit a “lustration declaration” confirming that he had not collaborated with the Communist-era Security Service. The Warsaw Court of Appeal initiated lustration proceedings *ex officio* and, after examining documents and witness testimony, ruled in August 2000 that Wałęsa had submitted a truthful declaration. It found that the authenticity of the Security Service files concerning an alleged secret collaborator codenamed “Bolek” (allegedly the applicant) could not be reliably established and might have been fabricated later. In the absence of any credible evidence of collaboration, the applicant’s declaration was deemed true.

Despite this judgment, allegations of his collaboration continued to circulate in political and media debates, particularly among prominent figures associated with the Law and Justice (PiS) party, including Jarosław Kaczyński and Zbigniew Ziobro. Jarosław Kaczyński had previously served as the Head of the Chancellery of the President of Poland during the applicant’s presidency before being dismissed, later becoming one of his strongest political opponents. Krzysztof Wyszowski, linked to the Kaczyński brothers and a PiS member since 2010, also consistently maintained that the applicant had been a secret collaborator.

On 16 November 2005 the Institute of National Remembrance (IPN) granted the applicant victim status, confirming that he had not been an SB collaborator. Later that day, during the news broadcasts on TVP2 and TVN24, Wyszowski, when asked for comment, once again publicly accused Wałęsa, stating: “Today victim status does not mean that you were not an informant. Lech Wałęsa was a secret collaborator under the alias *Bolek*, (he) reported on his colleagues, (he) received money for it ...”. In November 2005, the applicant filed a civil claim against Krzysztof Wyszowski for defamation, alleging that Wyszowski had falsely accused him of collaborating with the Security Service (SB) and damaged his reputation. Wałęsa sought on-air apologies on TVP2 and TVN24, as well as a donation to a children’s hospital. The Gdańsk District Court initially ordered Wyszowski to apologize and pay compensation, but subsequent appeals and retrials produced series of conflicting decisions. In 2010, the District Court dismissed the claim, highlighting the importance of public debate and journalistic discussion on historical facts, noting that Wałęsa, as a public figure, could expect scrutiny of

his past. In 2011, the Gdańsk Court of Appeal partially upheld Wałęsa's appeal, ordering Wyszowski to issue on-air apologies while rejecting monetary claims, as Wyszowski had not proven the truth of his allegations. Wyszowski's later attempts to reopen the case in 2017 were rejected as time-barred.

On 31 January 2020, the Prosecutor General Zbigniew Ziobro lodged an extraordinary appeal against the 2011 judgment of the Gdańsk Court of Appeal in Wałęsa's defamation case. He argued that the earlier judgment had disproportionately protected Wałęsa's reputation at the expense of Wyszowski's freedom of expression, breaching Articles 31 § 3 and 54 of the Polish Constitution as well as Article 10 of the European Convention on Human Rights. The Prosecutor General claimed that the Court of Appeal had wrongly assessed the evidence, failed to recognise that the impugned statements concerned a matter of significant public interest, and had unjustifiably denied Wyszowski the protections normally afforded to journalists.

Wałęsa, served with the extraordinary appeal only in June 2020, contested both its constitutionality and its use in a case that had been final for a decade, arguing that reopening the proceedings violated legal certainty and the right to a fair trial. On 19 April 2021, Wałęsa requested the exclusion of seventeen CERPA judges, including the rapporteur, Judge Stępkowski, arguing that their appointments by the restructured KRS raised serious concerns regarding independence and impartiality. His request was dismissed two days later without written reasons. That same day, CERPA reversed the 2011 judgment, dismissing Wałęsa's claim. In its reasoning, the chamber held that the extraordinary appeal met international standards and that the 2011 judgment had flagrantly violated Article 10 of the Convention. It concluded that Wyszowski had acted as a "public watchdog" and that, since his statements concerned a public figure, they were protected under the freedom of expression. The chamber also held that the principle of *res judicata* could be set aside given the fundamental importance of public debate in a democratic state.

On 5 October 2021, Wałęsa lodged an application (no. 50849/21) with the European Court of Human Rights under Article 34 of the European Convention on Human Rights. He complained under Article 6 § 1 of the Convention that his case had been examined by the CERPA, which, in his view, did not constitute an "independent and impartial tribunal established by law" within

the meaning of that provision¹⁷. Furthermore he argued that the extraordinary appeal procedure before the CERPA violated the principle of legal certainty¹⁸.

IV. Relevant legal provisions

1) Polish law

a) The Constitution of the Republic of Poland of 2nd april, 1997

Article 45 (1):

“Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.”

b) Act of 8 December 2017 on the Supreme Court

Article 89:

“1. If necessary in order to ensure compliance with the principle of a democratic State governed by the rule of law and implementing the principles of social justice, an extraordinary appeal may be lodged against a final decision (orzeczenie) of an ordinary court or a military court terminating proceedings in a case if:

(1) the decision violates the principles or freedoms and rights of every human being and citizen as laid down in the Constitution, [and/or]

(2) the decision grossly violates the law through its misinterpretation or misapplication, [and/or]

(3) there is an obvious contradiction between significant findings of the court and the content of evidence collected in the case

– and the decision may not be reversed or amended by means of other extraordinary remedies.

2. An extraordinary appeal may be lodged by the Prosecutor General, the [Polish] Commissioner for Human Rights and, within the scope of their competence, the President of the Office of the General Counsel of the Republic of Poland, the Ombudsman for Children’s Rights, the Ombudsman for Patient’s Rights, the Chairman of the Financial Supervision Authority, the Financial Ombudsman, the Ombudsman for Small and Medium Enterprises and the President of the Office for Competition and Consumer Protection.

3. An extraordinary appeal shall be lodged within five years from the date on which the decision appealed against has become final and, if a cassation appeal has been lodged against that decision, within one year from the date of its examination. [In criminal proceedings it] shall be inadmissible to allow an extraordinary

¹⁷[https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22POL%22\],%22appno%22:\[%2250849/21%22\],%22documentcollectionid%22:\[%22CHAMBER%22\],%22itemid%22:\[%22001-235702%22\]}](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22POL%22],%22appno%22:[%2250849/21%22],%22documentcollectionid%22:[%22CHAMBER%22],%22itemid%22:[%22001-235702%22]})

¹⁸ <https://strasbourgobservers.com/2023/12/08/walesa-v-poland-a-forceful-culmination-of-the-courts-rule-of-law-case-law/>

appeal to the detriment of the defendant if it is lodged more than one year after the date on which the decision has become final and, if a cassation appeal or a cassation [appeal in criminal matters] has been lodged against that decision, more than six months after the date of its examination.”

2) International and european law

a) The European Convention on Human Rights

Article 6 (1)

1. “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

b) The Charter of Fundamental Rights of the European Union

Article 47

“Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.”

V. The Court’s Reasoning

The applicant lodged two separate complaints under Article 6 of the Convention regarding the functioning of CERPA. The first concerned an allegation of a violation of his right to an independent and impartial tribunal established by law, given the manner in which CERPA judges were appointed¹⁹. On this issue, the Court largely confirmed the conclusions reached in its judgment in *Dolińska-Ficek and Ozimek v. Poland*, in which it found that the procedure for appointing CERPA judges was structurally flawed. In that case, the Court found that the defects in the appointment process undermined both the independence and impartiality of the CERPA and were therefore incompatible with Article 6 § 1 of the Convention. Applying the same

¹⁹ <https://strasbourgobservers.com/2023/12/08/walesa-v-poland-a-forceful-culmination-of-the-courts-rule-of-law-case-law/>

reasoning, the Court again found that the applicant's right to an independent and impartial tribunal established by law under Article 6 § 1 of the Convention had been violated²⁰.

As to the second complaint, the applicant argued that the extraordinary appeal procedure before the CERPA violated the principle of legal certainty. The Court began here by recalling its settled case-law that the principle of *res judicata* requires final and binding judgments to remain stable and not be subject to reopening, except in truly exceptional situations justified by compelling reasons. The Court issued a strongly critical assessment of the Polish system of extraordinary appeal procedure before the CERPA. It underlined that the procedure was initiated predominantly by the Prosecutor General, who simultaneously served as Minister of Justice; that the statutory grounds for lodging such appeals were imprecise and overly broad; that the time limits allowed reopening cases even two decades old; that the CERPA possessed far-reaching powers to reassess both facts and law; and that the chamber itself could not be regarded as an independent and impartial tribunal established by law. Turning to the circumstances of the case, the Court held that the extraordinary appeal in Wałęsa's case illustrated the Polish systemic flaws. In the Court's view, the extraordinary appeal procedure was used in this case as an ordinary appeal in disguise, reopening a case that had been closed more than nine years ago and which had subsequently been thoroughly examined at six levels of jurisdiction. The Court found no compelling reasons that would justify challenging the final judgment in the Wałęsa case. Instead, it observed signs indicating that the Minister of Justice had used his exceptional statutory powers to pursue his political hostility towards a prominent political opponent through state judicial mechanisms. The Court found that such conduct constituted an abuse of legal procedure by a state authority for political purposes. It therefore also found a violation of Article 6 of the Convention on account of the breach of legal certainty.

A particularly significant element of the *Wałęsa v. Poland* judgment lies in what followed the Court's findings of several violations. Namely in final section of the judgment, the Court decided to apply the pilot-judgment procedure in response to the escalating rule-of-law crisis in Poland. It reviewed its earlier case-law on the subject and underlined the rapidly growing number of related applications, most of which alleged a breach of the right to an independent

²⁰[https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22POL%22\],%22appno%22:\[%2250849/21%22\],%22documentcollectionid%22:\[%22CHAMBER%22\],%22itemid%22:\[%22001-235702%22\]}](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22POL%22],%22appno%22:[%2250849/21%22],%22documentcollectionid%22:[%22CHAMBER%22],%22itemid%22:[%22001-235702%22]})

and impartial tribunal established by law as a result of the defective judicial appointment procedure conducted by the newly composed KRS.

The Court emphasised that the existing violations stem from several interconnected systemic problems. The main problem lies in the current composition of the KRS, which raises doubts about the legality of each newly appointed judge. Secondly, CERPA, a body that cannot be considered an independent tribunal established by law, has exclusive jurisdiction to hear cases concerning the independence of Polish judges. Third, the very design of the extraordinary appeal mechanism, which is incompatible with Article 6 standards and the principle of legal certainty. Finally, these extraordinary appeals are adjudicated by judges appointed through the same defective procedure, further compounding the structural deficiencies. Together, these elements create a systemic framework that repeatedly infringes core rule-of-law guarantees. In view of the scale and persistence of the problem, it concluded that a pilot judgment was necessary to prompt structural reforms²¹.

VI. Poland's Legislative Response to the ECtHR Judgment in *Waleśa v. Poland*

According to information provided by the Polish Ministry of Justice, the scale of the “neo-judges” problem in Poland is considerable. Neo-judges now constitute approximately 28% of the judiciary in district, regional, and appellate courts, 34% in the Supreme Administrative Court, and as much as 60% in the Supreme Court. The consequences of this situation have already had a tangible financial impact - Poland has paid over 5.5 million PLN in compensation resulting from judgments of the European Court of Human Rights that found violations of the right to a fair trial provided in the art. 6 ECHR due to rulings issued by unlawfully appointed judges. Additionally, due to broader rule of law violations, the European Commission deducted nearly 3 billion PLN from EU funds allocated to Poland, corresponding to the financial penalties imposed by the Court of Justice of the European Union. Recognizing the scale of the problem, the Ministry of Justice drafted the Act on Restoring the Right to an Independent and Impartial Court Established by Law, regulating the consequences of the resolutions adopted by the National Council of the Judiciary (KRS) between 2018 and 2025 (in its latest version of 15

²¹ <https://strasbourgobservers.com/2023/12/08/walesa-v-poland-a-forceful-culmination-of-the-courts-rule-of-law-case-law/>

October 2025). According to the Ministry, the bill aims to address the legal effects of the neo-KRS's resolutions and to clarify the status of judicial appointments made on their basis. This approach stems from the assessment that these resolutions failed to comply with constitutional and European standards. The proposed legislation is also intended, among other objectives, to implement the judgment of the European Court of Human Rights in *Wałęsa v. Poland*. According to the draft legislation, graduates who entered the judiciary directly from the National School of Judiciary and Public Prosecution (KSSiP), as well as former court registrars and assistants, approximately 1,100 individuals, will retain their judicial status *ex lege*²², despite having been appointed with the involvement of the neo-KRS. Judges who had been lawfully appointed in the past but later received promotions through procedures involving the neo-KRS will return to their original courts. However, they will receive a two-year delegation to continue adjudicating in their current posts, allowing them to complete pending cases. These judges will subsequently be able to participate in repeated competitions before a future, lawfully constituted KRS. The draft also provides that so-called "neo-judges" will no longer be permitted to adjudicate in the Supreme Court as their appointment acts will be declared null and void, and they will not be eligible to remain there on delegation (affecting 56 individuals). Furthermore, the draft foresees the abolition of the Chamber of Extraordinary Review and Public Affairs (CERPA) and the elimination of the extraordinary appeal mechanism. While judgments previously issued with the participation of unlawfully appointed judges will remain in force, they may be challenged by parties who consistently contested the legality of the adjudicating panel during their proceedings²³.

ASSEDEL considers this draft law an important and necessary step towards restoring the rule of law in Poland, however it shares the concerns expressed by the Polish Commissioner for Human Rights, Marcin Wiącek. In his view, the draft legislation rests on an incorrect assumption that individuals appointed to judicial office after 6 March 2018 are not judges within the meaning of domestic and constitutional law. While the status of these judges indeed requires clarification, such an assessment must be carried out in accordance with constitutional and international standards. Under these standards, judicial appointments made with the participation of the re-constituted KRS are legally flawed, yet they are not automatically void. The Venice Commission, in its opinion on the planned reforms, acknowledged that Poland is

²² By virtue of law.

²³ <https://www.gov.pl/web/sprawiedliwosc/koniec-bezprawia-w-sadach---ministerstwo-sprawiedliwosci-przedstawia-ustawe-praworzadnosciowa>

indeed obliged to take swift action to regulate the status of judges appointed through the defective procedure before the KRS. However, it emphasised that each judicial appointment must be assessed individually²⁴. Irregularities in the appointment procedure may justify removal from office or a return to the previously held position, but this is permissible only on the basis of a judicial decision and not through a collective, politically driven act of the legislature. It is reasonable to assume that, should the draft be enacted, the affected judges would seek protection before the European Court of Human Rights. Given the Court's existing case-law, further judgments finding violations of the Convention would be inevitable, deepening the ongoing crisis within the judiciary and generating additional disputes regarding judicial status. Paradoxically, the draft could therefore produce effects directly contrary to its stated objective²⁵. For the above-mentioned reasons, ASSEDEL believes that although the draft law undoubtedly requires further refinement, the efforts of the Ministry of Justice and its commitment to addressing the systemic rule of law crisis should nevertheless be viewed positively.

²⁴ <https://www.gov.pl/web/sprawiedliwosc/komisja-wenecka-wydala-opinie-nt-zmian-dotyczacych-uregulowania-statusu-sedziow>

²⁵ <https://bip.brpo.gov.pl/pl/content/rpo-sadownictwo-krs-projekt-opinia-ms>