

POLAND: Supreme Court stand-off will culminate in autumn

The ruling conservative Law and Justice (PiS) will likely put forward a partial compromise on the dismissal of Supreme Court judges in reaction to demonstrations last week; however, the concessions will probably fall short of the European Commission requirements. The issue will likely resurface again in autumn, just as the European Council is set to vote on the warning to Poland under the ongoing Article 7 procedure. Domestically, the increased political oversight of the judicial system may lead to the deterioration of the institutional environment in the medium term.

The new law, which lowered the retirement age of Supreme Court judges from 70 to 65 years of age, entered into force on 3 July; affecting 27 out of a total 72 judges, including the President of the Supreme Court, Malgorzata Gersdorf. Gersdorf has refused to step down, and ten more judges decided to ignore the new law, which they deem unconstitutional. The remaining judges applied for the extension of their terms, and President Andrzej Duda (formerly of the PiS) has to decide on their cases by early November.

This timeline suggests the Supreme Court situation may become a major topic of public discussion just before local elections in November, which will likely motivate the PiS to offer a partial compromise on the matter, for example, an extension of terms for some judges that applied for it. However, it is unlikely that the ruling party would sacrifice the core aim of the reform: to increase political control of the Supreme Court. The PiS's will likely outline its compromise offer by the time that Gersdorf returns from a two-week holiday in mid-July.

A partial compromise without alterations to the core purpose of the reform is unlikely to satisfy the European Commission. On 2 July the Commission launched a new infringement procedure against Poland raising concern over the lack of criteria for extension of the judges' terms in office. If the government fails to make amends, the Commission may refer the matter to

the European Court of Justice (ECJ); most likely in the early November. ECJ proceedings may take up to two years and lead to fines; however, this threat is unlikely to dissuade the PiS from pursuing judicial system changes it deems vital to its project of the political system overhaul.

Finally, the European Council will likely hold a vote on a formal warning to Poland under the [Article 7 procedure](#) in autumn. The Supreme Court stand-off increases the chances that the four-fifths majority or 23 out of 28 votes (Poland not voting) in favor of this motion will be achieved, although sanctions remain unlikely.

Domestic implications

The Supreme Court primarily serves as the court of last resort in appeals against judgments in lower courts. However, it also adjudicates upon the validity of elections, which increases the concern over possible implications of politicization of the court for the system of democratic checks and balances. While the reform may not have an immediate visible impact on the legal environment, in the medium term, increased political oversight may lead to a deterioration in institutional quality.

Gersdorf's pending dismissal may trigger further public protests and increase the polarization of Polish society into pro- and anti-government camps. The activation and cohesion of both camps will next be tested in local elections, ahead of presidential and parliamentary elections next year.

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