**The contemporary crisis of trust in the justice system – public opinion about the judicial culture**

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*Abstract: The paper addresses the issue of citizens' trust deficit in the institutions and mechanism of the justice system in Poland. Due to the changes introduced after the 2015 takeover, the courts have become one of the most crucial targets for achieving the ruling party’s aim – concertation of power by subordination of previously independent institutions. The operation to denigrate the judiciary’s image was carried out by using public media and separating the judges from society, causing them to rely only on the formalistic approach when interpreting the statutes for fear of being accused of violating their competences and subjected to prosecution by state authorities. The court has become the place of mass-produced justice, where the judge does not know how to ’save a trusting face’.*

*Keywords: justice system, social legitimacy, public opinion, right to a court, rule of law*

One of the components of a democratic state of law is maintaining trust in state authorities, including an independent and impartial judiciary. Society should have faith in the application of the law, which should be clear and understandable, by an impartial professional from whom they expect moral responsibility and active involvement in the examination of a given case. Meanwhile, public opinion paints a different picture. The following article examines the reasons and solutions for the contemporary crisis of trust in the justice system in Poland.

In a 2022 study, more than half of respondents assessed the justice system negatively (55%), and opinions on maintaining judicial independence were divided[[1]](#footnote-1). The most frequent complaints included: the length of proceedings, too long and untimely court cases; consequences of politicization, unfair judgments, lack of objectivity and unequal treatment of the citizens. ’Lack of trust in the judiciary is worse than distrust in the legislative or executive power because those can be changed from time to time, but not the judicial one’[[2]](#footnote-2). This fosters a sense of widespread reluctance to resolve disputes in court, which is left to either fighting the institutions or legitimizing otherwise recognized rights and interests[[3]](#footnote-3). Citizens believe that financial opportunities lead to unequal chances in the court due to difference in ability to obtain good legal representation; while in smaller and more familiar communities, among a small minority there is a suspicion of judges' bias resulting from being influenced by personal acquaintances and influences[[4]](#footnote-4).

For most of society, the main source of knowledge about how courts function is the media (52%), which only provides examples of unjust judgments and bad judges[[5]](#footnote-5). Much less often, their assessments are based on experiences: more often, other people - family or friends (16%), slightly less often - personal (12%)[[6]](#footnote-6). Statements presented in the public media regarding the moral qualities of particular judges and the judiciary as a whole often seem to be inconsistent and heavily tainted by a political assessment of judges’ individual statements, decisions or actions. The media favorable to the government showed them as an unpunished, privileged group that steals without remorse[[7]](#footnote-7). Judges were criticized and said to be disrespectful towards their duties, full of incompetence and impunity[[8]](#footnote-8). Ongoing debates revolving around the constant undermining of CJEU’s case-law by the ruling party (resulting in the lack of legal certainty), combined with the government’s actions against the judiciary led to the discrediting of judges and thus the weakening of the authority of the third power.

Moreover, judges alienate themselves from the public sphere. They have to uphold the perception of impartiality to maintain trust, so they tend to avoid public engagement just in case[[9]](#footnote-9). Courts use outdated methods, proceedings are protracted, the bureaucracy is excessive, and judges communicate with citizens in a dismissive and complicated way, sometimes downplaying the case, so the clients often feel as if ‘they had received a verdict, but not justice’[[10]](#footnote-10) [[11]](#footnote-11). All this means that courts do not provide citizens with a sense of trust and security. In addition, since 2007, the participation of lay judges in the administration of justice has been decreasing. The essence of lay judges' institution, as an extremely important element of social control is ’based on the sense of justice resulting solely from their deep, inner conviction, knowledge, and life experience, and not on the rigid letter of the law’[[12]](#footnote-12). During the pandemic, all lay judges were eliminated from the civil trials. According to the Ombudsman (Commissioner for Human Rights), this was an unconstitutional solution, depriving society of important procedural guarantees, which cannot be justified by the state of epidemic threat[[13]](#footnote-13).

The judiciary ought to protect the system against excessive concentration of power. Courts have a controlling function and are entitled to negate the will of the majority in order to protect the law. Judicial resistance ‘is not an anarchy, but rather a legitimate defense of the constitutional order and its underlying axiology’[[14]](#footnote-14). The idea of judges rising up against the violation of the rule of law is implicitly based on the belief that they won't solely rely on literal, linguistic interpretations of statutory laws to decide cases. To do so would require them to move beyond their usual approach and incorporate the Constitution into their decision-making process[[15]](#footnote-15). This shift would involve critical evaluation of statutes and reclaiming the authority of being judges over the ‘Constitution *and* statutes’, rather than just interpreting statutes as per usual[[16]](#footnote-16). The judge should play an active role in the social integration process[[17]](#footnote-17).

Meanwhile, judges tend to hide behind formalism. Most of the arguments that can be found in the justifications of court decisions stop at the level of literal interpretation of statutes. The formalistic approach that dominates in courts means that judgments are divorced from common sense and justice[[18]](#footnote-18). However, it is impossible to effectively exercise the office of a judge if he or she is rigidly bound by law-making acts; the judge must be guaranteed discretionary power. The delegitimization of judicial power, which occurs mainly through the formal-legal plane (via the activities of the *neo*–National Council of the Judiciary), and secondarily through public discourse, made it impossible to entrust a judge with the discretionary power he should have[[19]](#footnote-19).

Courts function in the service to the citizen and anchoring the judicial power should lay in social legitimacy. After the Second World War, the primary role of the court became not to administer justice, but to protect human rights. However, perceiving the courts as an institution defending individual rights is a kind of instrumental justification that is unable to ensure their legitimacy as the third power, particularly in terms of their competence to review the constitutionality of other institutions[[20]](#footnote-20). Courts are seen merely as a tool of keeping citizens’ rights and freedoms in check, and not as an autonomous institution that can influence and watch over the executive and lawmaking power. Importantly, that what distinguishes courts from other state authorities is not ‘the special wisdom of judges or the effects of judgments, but the procedural and deliberative method of resolving cases, which is based primarily on the *right to a hearing*’[[21]](#footnote-21). Changing the culture of the judges means fulfilling the mission to the public by the overall attitude of serving the people. The growing distrust towards public institutions, combined with the growing popularity of populist movements, are treated as a threat to the democratic system.

‘There will always be criticism of the justice system because in every case there are losers and winners’. But the losing party may also feel less ‘lost‘ when the ruling is based on a substantive understanding of the law that is ‘blind’ but possesses a sense of ‘hearing’. The media should abstain from showing judges in a bad light, especially if there is a political motivation to do so. Above all, gray propaganda should always be watched for. Secondly, judges should take the initiative in building a trustworthy image and stop isolating themselves from the public eye. Society does not know its judges. Once an individual has a personal experience with the court, their opinion is not as critical as an opinion based solely on ‘second-hand’ experience.

The rule of law undeniably depends on the right to a court from a formal point of view, and the right to a fair trial from a material point. The court is a place where citizens come into direct contact with the law, can experience its effects and understand its machinations. Without access to a court (including the ‘trustful’ court), people would be detached from the source of power that derives its existence from the will of the state - it would create a regime in which the ‘invisible hand of the law’ is used as a form of control and oppression of the individuals, and not as a shield protecting citizens against violation of their rights. Access to a court may be restricted not only by physical but also mental barriers, that are formed in response to outside factors designed to shape our perception of the justice system. Without the medium (the court) the law would become the distant tyrant, that looks down on the people, but they cannot look up to it.

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