

European Court of Human Rights towards violations of judicial independence in illiberal democracies

In recent years, an increase in violations of judicial independence resulting from the adoption of a form of government based on the concept of so-called illiberal democracy can be observed in some European countries. There are far-reaching differences between such states, but one element present in each is systemic restrictions on the independence of the judiciary. These restrictions can take the form of, for example, personnel changes aimed at staffing the courts with persons trusted by the political authorities, the abuse of disciplinary or other sanctions against independent judges and, in extreme cases, even the deprivation of their liberty.

In contemporary Europe, such violations of the independence of the judiciary in states cannot be regarded as purely internal problems of those states. Indeed, there is no doubt that the independence of the judiciary is a cornerstone of European constitutionalism and, at the same time, the basis on which the system of protection of human freedoms and rights established by the European Convention on Human Rights rests. This follows not only from the direct expression in the ECHR of the right to have a case heard by an independent and impartial court established by law, but also from the role of independent courts for the protection of all other freedoms and rights protected under the Convention. With this in mind, systemic violations by states of the independence of the judiciary must be seen as violations of the international obligations that states have voluntarily entered into by acceding to the ECHR.

In these circumstances, it seems clear that the European Court of Human Rights, as the body upholding the freedoms and rights expressed in the ECHR, can be expected to respond to threats arising from violations of judicial independence in illiberal democracies. The question arises, however, whether the ECtHR is in a position to respond effectively to such challenges given its specificity as an international court in many respects different from, for example, the position of national constitutional courts, as well as the structural problems associated with its functioning.

The primary objective of the project will be to examine the ECtHR's response to specific threats to judicial independence in illiberal democracies and to assess whether the ECHR can be considered as an instrument providing effective protection against such threats. The research hypothesis to be verified in the course of the project is that the ECtHR has responded to threats to judicial independence, but that the effectiveness of its actions is limited by factors related to the content of the ECHR itself and the specificity of the ECtHR as an international court, on the one hand, and by intra-national factors in non-liberal states, on the other. In order to verify this hypothesis, it will be necessary, firstly, to identify what are the most important threats to judicial independence in non-liberal democracies. In this regard, the project will examine the law and practice in three European non-liberal democracies: Poland, Turkey and Hungary. Secondly, it will be necessary to identify the standards arising from the ECtHR case law on the protection of judicial independence and to determine how these standards have been applied in cases involving violations of judicial independence in non-liberal democracies. In this regard, it will be necessary to examine, inter alia, whether the ECtHR has taken into account the specificity of threats to judicial independence in illiberal democracies and whether its jurisprudence has evolved under the influence of the experience of the rule of law crisis in these states. It will also be necessary to examine how the specificity of the ECtHR as an international court and the systemic problems the Court has faced over the years (e.g. length of proceedings, non-enforcement of its judgments) affect the effectiveness of its actions in protecting the independence of the judiciary. It will also be necessary to examine the significance of intra-country factors affecting, for example, the scale of the use of the ECHR to protect the independence of the judiciary in national procedures or the number of complaints submitted to the ECtHR. On this basis, it will be possible to draw some conclusions as to whether the ECtHR has the instruments to provide an effective response to threats to judicial independence in illiberal states.

The results of the project will have a positive impact on the development of science for at least several reasons. Firstly, the research problem is novel and has not been the subject of comprehensive scientific studies so far. Secondly, the project is part of the research on the phenomenon of illiberal democracy and the crisis of the rule of law, which has been conducted for a long time in Polish and foreign literature. It will also contribute to the discussion on the relationship between the domestic constitutional system and international law and the possibility of viewing the ECHR as a constitutional court for Europe. Thirdly, the strength of the project will also be that the research conducted will not be limited to a discussion of the ECtHR's jurisprudence - the legal and practical barriers limiting the effectiveness of the ECtHR's action in protecting the independence of the judiciary in illiberal democracies will also be analysed.