



H.E. Mr Andrzej Duda, President of the Republic of Poland
H.E. Mr Tomasz Grodzki, Marshal of the Senate of the Republic of Poland
H.E. Ms Elżbieta Witek, Marshal of the Sejm of the Republic of Poland
H.E. Mr Mateusz Morawiecki, Prime Minister of the Republic of Poland

19 March 2020

Excellencies,

The Bar Council of England and Wales (Bar Council) and the Bar Human Rights Committee of England and Wales (BHRC) express grave concern as to the motion filed by the National Prosecution Office to the Disciplinary Chamber of the Supreme Court (Disciplinary Chamber) to waive the immunity of Judge Igor Tuleya, initially scheduled for 20 March 2020.

It is our most serious concern that if the motion to this Disciplinary Chamber to waive the immunity of Judge Tuleya is granted, the prosecution will subsequently seek to bring criminal charges against him in retaliation against a judgment he issued on 18 December 2017. In this judgment, Judge Tuleya overruled a decision by the National Prosecution Office to discontinue an investigation into the potentially unlawful passing of the government's budget during a session in the lower chamber of parliament and ordered a new investigation. In the parliamentary session, opposition MPs reported that they were not permitted to take part in the deliberations, that voting reports were reworked and that there may not have been a quorum present during the voting.

Whilst we acknowledge the need to maintain the integrity of any judicial process, and judges, prosecutors and lawyers must be subject to strict rules of professional conduct, any interference with the judiciary must be strictly necessary and subject to

procedural safeguards, including independence from the executive organs of government.

The Disciplinary Chamber, whose establishment in 2017 has been severely criticised by the EU Commission and the Venice Commission on rule of law grounds, has been found not to constitute a court, within the meaning of both EU and Polish law, by the Labour and Social Security Chamber of the Supreme Court, by application of the European Court of Justice ruling of 19 November 2019 in Joined cases C-585/18, C-624/18 and C-625/18. Notwithstanding these judgements, Polish authorities have encouraged the Disciplinary Chamber to continue to operate. As observed by the European Commission on 14 January 2020, this open disregard for the rule of law creates “a risk of irreparable damage for Polish judges” while also “increasing the chilling effect on the Polish judiciary”.

We further note with dismay that the Polish authorities, as well as the now unlawful Disciplinary Chamber, have openly and repeatedly ignored the resolution of the combined Civil Chamber, Criminal Chamber and Labour Law and Social Security Chamber of 23 January 2020 which reiterated that the Disciplinary Chamber fails to fulfill the criteria of an independent and impartial court within the meaning of Article 47 of the EU Charter of Fundamental Rights, Article 6(1) ECHR and Article 45(1) of the Polish Constitution. Accordingly, all decisions of the Disciplinary Chamber to date were held to be legally defective and the members of the Disciplinary Chamber were ordered to refrain from adjudicating.

In light of the above, it is our very real concern that the motion to the body presenting itself as the Disciplinary Chamber is not merely unlawful but constitutes yet another instance of political reprisal against Judge Igor Tuleya for his continued defence of the rule of law in Poland, which all members of the judiciary have a duty to defend rigorously and fearlessly. This appears to be the first case considered following the introduction of a new set of legislative amendments, now widely known as Poland’s “muzzle law”, and which the most respected international organisations, professional bodies and experts specialising in the rule of law have denounced as being fundamentally incompatible with ECHR law, EU law as well as the Polish Constitution. Following its entry into force on 14 February 2020, judges can be arbitrarily investigated, punished or dismissed if they criticise the government’s so-called “judicial reforms”. These measures have grave consequences for the rights of Polish citizens, the rule of law, and the global standing of Poland. We note with alarm that according to the recently published World Justice Project Rule of Law Index 2020, Poland has experienced the world’s second biggest decline of constraints on government powers, with an average decline of -6.8% over the past five years.

We are seriously concerned that the proceedings initiated against Judge Igor Tuleya mask an attempt to harass and intimidate him, and indirectly, fellow judges. We note

that unjustified, unfathomable disciplinary proceedings also have been initiated against other judges, including Krystian Markiewicz, Chairperson of the Polish Judges' Association "Iustitia" and Judge Paweł Juszczysz, for what appears to be victimisation for upholding the rule of law and defending judicial independence. In the case of Judge Paweł Juszczysz, the Disciplinary Chamber, by then no longer a court as per the rulings of the European Court of Justice and the Supreme Court of Poland and in breach of the said rulings, has furthermore (unlawfully) suspended him while cutting his remuneration by 40% until the disciplinary proceedings conclude.

This pattern of harassment is set against a backdrop of increasing measures to damage judicial independence, which have been adopted and enforced by Polish authorities. Poland has now become the first EU country to be simultaneously subject to the exceptional procedure laid down in Article 7 TEU and the monitoring procedure of the Parliamentary Assessembly of the Council of Europe. The intervention of the Parliamentary Assembly of the Council of Europe followed the adoption of a report concluding that the changes made to the judiciary and justice system in Poland have cumulatively undermined and severely damaged the independence of the judiciary and the rule of law.

We recall that Article 45 of the Polish Constitution guarantees all citizens the right to a fair hearing before a competent, impartial and independent court. In addition, Article 10 of the Polish Constitution specifically provides for the separation of powers, while Articles 173 and 178 emphasise the independence of judges and the judiciary. Further, the Polish government is bound by its obligations under Article 6 of the European Convention of Human Rights and Article 14 of the International Covenant on Civil and Political Rights, which provide that every person has the right to have cases, civil or criminal, determined by an independent and impartial tribunal established by law. These fair trial requirements are further reflected under Article 47 of the EU Charter of Fundamental Rights, which is binding on Poland with Article 19(1) TEU imposing on Poland a strict legal obligation to maintain and not undermine the independence of Polish courts so as to ensure that each court meets the requirements of effective judicial protection under EU law. We also recall the UN Basic Principles on the Independence of the Judiciary and the Bangalore Principles on the Independence on the Judiciary, and the 2010 Recommendation of the Council of Europe's Committee of Ministers on judicial independence, efficiency and responsibilities.

The Bar Council and BHRC take very seriously all acts of interference with the independence of the judiciary. Taking these international standards and binding legal obligations into consideration, we call upon the relevant Polish authorities to respect their obligations under the Polish Constitution, the ECHR and EU law; to comply with the judgment of the Supreme Court of 5 December 2019; to respect the resolution of the Polish Supreme Court of 23 January 2020; to refrain from actions and statement

attacking and vilifying judges and prosecutors; and to take all necessary measures to suspend the operation of the Disciplinary Chamber and end the politicisation of the new National Council of the Judiciary. We further call on the Government and the Law and Justice (PiS) party majority in Parliament to reverse all measures that have been introduced in breach of the most basic tenets of the rule of law and which have already so severely damaged the independence of the judiciary and the rule of law. Finally, we call for the arbitrary motion against Judge Igor Tuleya to be withdrawn without delay.

We will continue to stand in solidarity with the Polish legal profession and the judiciary which is working tirelessly to defend the rule of law in their country.



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