



The Bar Council



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

07 December 2020

Excellencies,

On 19 March 2020 the Bar Council of England and Wales (Bar Council) and the Bar Human Rights Committee of England and Wales (BHRC) wrote to you to express serious 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.

We called upon the relevant Polish authorities to respect their obligations under the Polish Constitution, the European Convention on Human Rights, and European Union 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 statements 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 We called for the arbitrary motion against Judge Igor Tuleya to be withdrawn without delay.

We wrote again on 8 June 2020 repeating our call for the motion to be withdrawn without delay, and for the hearing proposed for 9 June 2020 to be cancelled. We considered that proceeding would entail a serious violation of EU law and of Poland's binding treaty obligations. Moreover, it would do irreparable harm to the existence of an independent judiciary in Poland, and therefore cause serious damage to the rule of law.

A third letter in similar terms was sent in advance of a proposed hearing on 5 October 2020. We expressed our dismay that the motion was due to be heard by the Disciplinary Chamber in the face of the clear ruling by the Supreme Court that it is not a 'court' within the meaning of either Polish or EU law. We noted that the Court of Justice of the European Union (CJEU) judgment of 8 April 2020 requires Poland to suspend the legislative provisions constituting the basis of the jurisdiction of the Disciplinary Chamber to rule in disciplinary cases concerning judges, and to refrain from referring pending cases to a panel which does not meet the requirements of independence as defined by the CJEU. We again called for the motion against Judge Tuleya to be withdrawn.

We therefore were gravely concerned to learn that on 18 November 2020, the Disciplinary Chamber overturned its first instance decision, granted (in part) the prosecutor's motion to waive Judge Tuleya's immunity, suspended him from professional duties and reduced his pay by 25%. We note that in a statement delivered on 18 November 2020¹, CJEU Judge Marek Safjan wrote that "...the decision of the Disciplinary Chamber of the Supreme Court on Judge Tuleya is not a legal decision." In his view, the decision could not be reconciled with either Polish or EU law and the Disciplinary Chamber's hearing of the case violated the interim measures order issued by the Court of Justice on 8 April 2020. The decision was of particular concern because it represented a "direct and impermissible encroachment on the sphere of judicial independence."

We recall the 1985 UN *Basic Principles on the Independence of the Judiciary*, and the 2002 Bangalore *Principles of Judicial Conduct* (Value 1, Independence "A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in

¹ <https://www.onet.pl/informacje/onetwiadomosci/sedzia-igor-tuleya-bez-immunitetu-prof-safjan-komentuje/lpe1rzb,79cfc278>

accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason”), as well as the 2010 Recommendation CM/Rec(2010)12 of the Council of Europe’s Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

We join with Judge Safjan and with the Center for Human Rights of the American Bar Association (20 November 2020)² in condemning the latest decisions as further undermining the independence of the Polish judiciary and constituting a violation of Judge Tuleya’s individual rights under the European Convention on Human Rights and the ICCPR. We reiterate the concern outlined in our previous letters that Judge Tuleya’s case falls within the context of a series of wider measures which threaten the rule of law in Poland. We again urge the relevant authorities to take steps to ensure that Poland complies with its obligations under the Constitution, pursuant to EU law and international law, respects the principle of judicial independence, and upholds the rule of law.

We would welcome a substantive reply, indicating what action has been taken or will be taken to meet our concerns.



Amanda Pinto QC
General Council of the Bar, Chair



Schona Jolly QC
Bar Human Rights Committee of
England and Wales, Chair

² https://www.americanbar.org/groups/human_rights/reports/the-case-of-judge-igor-tuleya--continued-threats-to-judicial-ind/

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