



The Bar Council



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

25 September 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 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. A follow up letter was sent on 8 June 2020.

In those letters 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 judgement 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. These calls have not resulted in action on your part.

We now understand that a new date of 5 October 2020 has been set for the Disciplinary Chamber to consider the motion to waive Judge Tuleya's immunity from criminal prosecution. We are deeply dismayed that the hearing is due to take place before 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. In addition, 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 note that as recently as 17 September the European Parliament passed a resolution calling on the Polish authorities to implement swiftly and fully comply with the CJEU order of 8 April and

calling on the Commission to request the CJEU to order payment of a fine in the event of continued non-compliance.

In light of the above, we reiterate our serious concern that the pursuit of this motion in the case of Judge Tuleya is not only unlawful but represents an unacceptable reprisal against him for his defence of the rule of law in Poland and forms part of a series of measures which strike at the heart of judicial independence in Poland and fundamentally undermine the rule of law.

In this regard we note that since our 8 June letter, the European Court of Human Rights has communicated Judge Tuleya's application to the Court to the Government of Poland, and has sought its observations on the allegations of breach of Article 8, Article 10 and Article 13 ECHR arising from the seven sets of disciplinary proceedings initiated against him in 2018. The Court has already communicated to the Government several applications made by members of the Polish judiciary since 2018 in connection with their role as judges. We note that the chilling effect of these disciplinary actions against Judge Tuleya sits in the context of the hundreds of judges who have faced disciplinary investigations since 2018. In its report of 6 January 2020 the Monitoring Committee of the Council of Europe's Parliamentary Assembly noted the very high number of disciplinary investigations opened in this period. The report also observed that on numerous occasions disciplinary proceedings had been initiated against judges who had been critical of judicial reforms and their effect on judicial independence, and that the main motivation for those proceedings appeared to be such criticisms. Disciplinary proceedings had also been started for decisions judges had taken while adjudicating cases.

The Bar Council and BHRC unequivocally condemn these acts which compromise the independence of the judiciary, undermine Poland's rule of law and appear to victimise those who seek to defend these vital principles.

Accordingly, we urge you again to take steps to ensure that the arbitrary motion against Judge Igor Tuleya is withdrawn without delay.



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