

Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **recent legislative and executive acts that threaten the independence of the judiciary in Poland**.

According to the information received:

Three laws that threaten the independence of the judiciary – the bills concerning the National Council of the Judiciary, the Supreme Court and the common courts – were recently adopted by the Polish Parliament. The first two of these three bills were vetoed by the President of Poland on 24 July 2017, while the latter was approved.

Tensions related to the independence of the judiciary began in 2015, when the newly elected Government refused to swear into office judges appointed to the Constitutional Tribunal by the previous Parliament. The Government also refused to implement several court rulings of the Constitutional Tribunal. Subsequently, a series of laws related to the judiciary were introduced, including the merging of the functions of the Justice Minister and the formerly independent Prosecutor General and amendments to the law on the Constitutional Tribunal, which reportedly undermined its effectiveness and independence.

On 12 July 2017, the Polish Parliament voted to adopt two different amendments related to the judiciary. The first amendment stipulated that members of the National Council of the Judiciary (NCJ), the constitutional organ in charge of safeguarding the independence of the judiciary, would be appointed by Parliament. The second amendment would increase the power of the executive over local regional courts, by giving the Minister of Justice the power to appoint presidents and vice-presidents of common courts.

On 19 July 2017, Poland's Commissioner for Human Rights warned that the proposed legislative changes had the purpose of subordinating the courts to political power, which would explain "the surprise moves [by Parliament], the rapid pace of proceedings and the complete lack of willingness to engage in discussion".

On 24 July 2017, the Polish Parliament adopted a new law on the Supreme Court by a vote of 55 to 23. The law would force all Supreme Court justices to resign, with the exception of those indicated by the President of Poland. The President would be given the power to decide on whether to terminate the tenures of selected judges upon a recommendation made by the National Judicial Council, which in turn is issued upon a request made by the Minister of Justice. The law further stipulates that if the First President of the Supreme Court were to be forced to resign, the Minister of Justice would be the one to indicate which justice of the Supreme Court would fulfill the duties of First President. Prior to the adoption of the new law by Parliament, the President of Poland amended the draft bill to include a provision that new judges would have to be chosen by a three-fifth majority in Parliament.

All three legal acts were met by large scale public protests across Poland, as well as opposition by civil society groups. On 18 July 2017 tens of thousands protested in Warsaw and other major cities.

On 24 July 2017, the Polish President vetoed the law on the Supreme Court and the law on the National Council of the Judiciary, but signed the law on the common courts. The two vetoed laws will be sent back to Parliament, which will either write new bills that would meet the President's approval or override the veto, which would require a majority of sixty percent.

Serious concern is expressed about the apparent interference of the executive and legislative powers in the independence of the judiciary, in contradiction of the fundamental principle of the separation of powers and international human rights standards. While I commend the recent veto by the President of your Excellency's Government on the law on the Supreme Court and the National Council of the Judiciary on 24 July 2017, I express concern regarding the law on the common courts, which was approved on the same date. I also urge that any revision and re-introduction of the laws on the Supreme Court and the National Council of the Judiciary by Parliament should be a process that is implemented in full conformity with national laws and procedures, as well as the international and national human rights obligations of the State.

In this context and without prejudging the accuracy of the situation described above, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues.

The independence of the judiciary is prescribed, *inter alia*, in the International Covenant on Civil and Political Rights, acceded to by your Excellency's Government on 18 March 1997, and the UN Basic Principles on the Independence of the Judiciary.

The UN Basic Principles on the Independence of the Judiciary state, *inter alia*, that all governmental institutions must respect the independence of the judiciary; that the judiciary shall decide matters before them impartially, without any improper influences,

pressures, threats or interferences; and that any method of judicial selection shall safeguard against judicial appointments for improper motives.

Further, article 173 of the Constitution of the Republic of Poland affirms the principle of judicial independence, stating that courts and tribunals shall constitute a separate power and shall be independent of other government branches.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the independence of the judiciary in Poland in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information on how the recently adopted law on the common courts complies with international human rights instruments, as well as Poland's Constitution, with regard to judicial independence.
3. Please provide detailed information on the measures adopted by your Excellency's Government to ensure that any future amendments to the law on the Supreme Court and the law on the National Council of the Judiciary comply with international human rights standards, as well as the fundamental principles of the independence of the judiciary and the separation of powers.

While awaiting a reply, I urge the Parliament and Government of Poland to initiate a dialogue with relevant partners, including the United Nations, to address the current situation and map an appropriate way forward. Any intervention with regard to the justice sector has to be made in full compliance with Poland's Constitution and international human rights obligations and should respect the fundamental principle of independence of the judiciary.

I intend to publicly reiterate my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release, attached herewith, will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers