



To His Excellency Didier Herbert

The Representative of the European Commission in The Netherlands

The Hague, June 8th, 2020

Your Excellency,

We address you as we are concerned with the recent events in the Republic of Poland and the erosion of democratic values and the increased attacks against the independence of the Judiciary in that Member State.

Judge Małgorzata Manowska has just been selected as First President of the Supreme Court of Poland. She was nominated as Judge to the Supreme Court, as were all the judges now presiding in the Disciplinary Chamber, by the National Council for the Judiciary. The independence of the National Council is questioned by the Court of Justice EU in ruling of 19 November 2019 (case C-585/18, C-624/18, C-625/18). Her appointment as First President was carried out in violation of the Polish Constitution as interpreted by the Constitutional Court of Poland (Case K 44/16).

We are now informed that the Disciplinary Chamber of the Supreme Court of Poland, an entity whose legal status is contested by the Court of Justice of the European Union, will consider revoking Judge Igor Tuleya's immunity, and punish him for passing a ruling allowing investigation of a possible breach of procedural rules during a vote on the floor in Parliament, and for allowing the press access to this ruling. This unprecedented **hearing of Judge Tuleya's case is scheduled for 9 June 2020 at 9:00.**

We would like to underline that waiving the immunity of a judge may have far-reaching personal consequences for the judge in question, who risks losing his or her job and a three year jail sentence. Worse is the fear that such a sentence would induce in all judges that ruling contrary to interest of the executive, the legislative, or an incumbent party, may lead to reprisals of this kind. The risk of such reprisal is obvious when we consider that in Poland the office of Prosecutor General is in the hands of the Minister of Justice Zbigniew Ziobro, who has been extraordinarily active in his pursuit of independent judges.

Małgorzata Manowska, designated as First President of the Supreme Court of Poland, has allowed the Disciplinary Chamber to persecute Judge Tuleya in violation both of **binding provisions of the Court of Justice of the EU in Luxembourg of 8 April 2020** (case C-791/19 R), which ordered the Disciplinary Chamber to halt its disciplinary activities, and of the resolution of the combined Civil, Criminal and Labor Chambers of the Supreme Court of Poland of 23 January 2020 (case BSA I-4110-1 / 20).

We bring this protest before you and the European Commission, Your Excellency, because Judge Igor Tuleya may be the first judge to lose his immunity and, consequently, his freedom. It will depend on our hard opposition whether subsequent judges such as Waldemar Żurek, Krystian Markiewicz, Paweł Juszczyszyn, Piotr Gąciarek, and Dorota Zabłudowska will suffer similar persecution for defending the independence of the judiciary.

Independent judges are no longer allowed to fight for the independence of the courts according to the unconstitutional provisions of the shameful "muzzle law", approved by Parliament in 23 January 2020, which is also subject to infringement proceedings by the European Commission since 29 April 2020. They may not, inter alia, rule on faulty appointments of judges and assessors, and all requests by parties to exclude judges appointed by the National Council for the Judiciary go to the Chamber of Extraordinary Control and Public Affairs, which is itself 100% staffed by judges appointed by the very same National Council.

As "guardian of the treaties", the European Commission is responsible for ensuring that the European law is properly applied in all the member states. Rule of Law, independence of the Judiciary and separation of powers are fundamental basic principles on which the European Union was built.

It is therefore the responsibility of the European Commission to break this vicious circle and stop the political dance around the courts.

In this day, we join our colleagues from all over Europe to demand a strong and serious action from the European Commission against the destruction of democracy and the rule of law in Poland.

Yours sincerely,

Tamara Trotman

Chair

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