



To Her Excellency
The Ambassador of the Republic of Poland to
Sweden

Örebro, June 10th, 2020

Your Excellency,

On behalf of the Swedish Judges Association, we address you 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 Poland.

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 was scheduled for 9 June 2020 at 9:00.

We feel compelled to remind the Government of the Republic of Poland 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 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.

We also feel compelled to remind the Government of the Republic of Poland that 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 your Government to secure that Judge Igor Tuleya and other judges do not suffer fear of 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, in our view, aptly named "Muzzle law", approved by Parliament 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 staffed by judges appointed by the very same National Council.

We expect the Government and the Supreme Court of the Republic of Poland to abide by European Law and the rulings of the Court of Justice of the European Union, and immediately halt all disciplinary activity under the auspices of the so-called Disciplinary Chamber of the Supreme court.

Yours sincerely,

Björn Lindén

President of the Swedish Judges Association

Cc: The Government of Sweden, Ministry for Foreign Affairs and
Ministry of Justice, Division for Procedural Law and Court Issues