

Statement of ICJ Commissioners and Honorary Members on the Rule of Law Crisis in Poland

The International Commission of Jurists (ICJ), its Centre for the Independence of Judges and Lawyers (CIJL) and the undersigned Commissioners and Honorary Members of the ICJ are alarmed at the rapidly escalating rule of law crisis in Poland.

It is clear that the separation of powers, the independence of the judiciary, and the capacity of Polish judges to uphold the rule of law are now severely compromised. Judges' freedom of expression, association and assembly are under immediate threat.

The passing by the Sejm on 23 January of the amendments to the laws on the judiciary, and their signing into law on 4 February, means that judges will be prohibited from questioning the legitimacy or institutional independence of any Polish court, even where its members have been appointed through a politically controlled process, in violation of EU and international law. Judges will face disciplinary action for denying the validity of any judicial appointment.

This law is an attempt to prevent any Polish court from upholding the independence of the judiciary, in the face of repeated legislative and government attacks on judicial independence in recent years.

This is directly contrary to the obligations of judges under the EU treaties to apply EU law, and would therefore lead to violations of Poland's EU law obligations. It would also lead to violations of Poland's obligations under international human rights law, since it would require judges to act contrary to their duty to uphold the right to a fair hearing before an independent and impartial tribunal.

As the Venice Commission noted in its recent opinion on the amendments, they are clearly "designed to have a nullifying effect" on recent judgments and resolutions of the Court of Justice of the EU and the Polish Supreme Court, which have called into question the validity of recent judicial appointments. As such, they do severe damage to the rule of law in Poland.

These developments follow recent legislation which has politicised the National Council of the Judiciary (NCJ) and imposed executive control of the appointment process for judges of the Supreme Court, court presidents and other judges. A powerful new Extraordinary Chamber as well as a Disciplinary Chamber of the Supreme Court, appointed under this new system, has further entrenched political control of the judiciary.

The ICJ, its undersigned Commissioners and Honorary Members, applaud the continued resolute defence of the rule of law by sections of the Polish judiciary. This has been evident in the resolution of the Supreme Court (Civil, Criminal, Labour and Social Security Divisions) of 23 January which found that recent judicial appointments meant that some Polish courts were not sufficiently independent to be legitimately constituted.

We deplore the response by President Andrzej Duda in which he suggested that judges opposing the judicial reforms on the judiciary acted out of improper self-interest.

The undersigned ICJ Commissioners and Honorary Members affirm their solidarity with Polish judges, in particular those who are currently facing abusive disciplinary or criminal proceedings for carrying out their judicial functions in accordance with the principle of judicial independence, or for exercising their freedom of expression, association or assembly as a means to defend the rule of law.

We recall that international human rights law and international standards on the judiciary require all branches of government to respect the independence of the judiciary. Furthermore, they recognise that judges have rights to freedom of expression and association and that they have a particularly important role in contributing to discussions on issues of the functioning of the judicial system and the rule of law, especially in defending the independence of the judiciary.

We call on the international community to respond to the Polish rule of law crisis in a manner appropriate to the gravity of the situation, before the damage to the Polish legal system becomes further entrenched.

In particular, we call on the European Union to urgently advance proceedings concerning Poland under Article 7 TEU, in light of the clear breach of EU law and EU fundamental values entailed by the new law, in conjunction with previous reforms, and by the government's open defiance of decisions of the Court of Justice of the EU and the Polish Supreme Court.

Signed by Commissioners and Honorary Members of the International Commission of Jurists:

Professor Robert K. Goldman, ICJ President

Justice Radmilla Dragicevic-Dicic, ICJ Vice-President

Dame Silvia Cartwright, member of the ICJ Executive Committee

Ms Hina Gilani, member of the ICJ Executive Committee and former UN Special Representative of the Secretary-General on Human Rights Defenders

Justice Azhar Cachalia

Professor Sarah H. Cleveland

Justice Martine Comte

Dato' Param Cumaraswamy, former UN Special Rapporteur on the Independence of Judges and Lawyers

Professor Dalmo A. De Abreu Dallari

Mr Mazen Darwish

Dr Rajeev Dhavan

Professor Alfredo Etcheberry

Justice Elizabeth Evatt AC

Professor Jochen A. Frowein, member of the German Delegation for the Warsaw treaty 1970, former Director of the Max-Planck-Institute for International Law

Dr Gustavo Gallón Giraldo

Professor Jenny Goldschmidt

Professor Michelo Hansungule

Justice Moses Hungwe Chinheng

Justice Kalthoum Kennou

Justice Paul J.G. Kapteyn

Professor David Kretzmer (Hebrew University of Jerusalem)

Professor Kofi Kumado

Professor Kyong-Whan Ahn

Professor Cesar Rodrigo Landa Arroyo

Justice Ketil Lund

Justice Qinisile Mabuza

Justice José Antonio Martín Pallín

Professor Juan E. Méndez, former UN Special Rapporteur on Torture

Justice Egbert Myjer, former judge of the European Court of Human Rights

Justice John Lawrence O'Meally

Justice Fatsah Ouguergouz

Professor Bertrand Ramcharan

Justice Michèle Rivet, C.M., Ad.E.

Professor Victor Rodríguez Rescia, former Human Rights Committee member; former Chair SPT

Professor Marco Sassoli

Mr Michael Sford

Justice Kalyan Shrestha

Justice Marwan Tashani

Mr Wilder Tayler, former Vice-Chairperson of the UN Sub-Committee on the Prevention of Torture

Justice Philippe Texier

Justice Lillian Tibatemwa-Ekirikubinza

Professor Christian Tomuschat, Former member of the UN Human Rights Committee

Justice Stefan Trechsel, Former President of the European Commission of Human Rights

Professor Theo Van Boven, former UN Special Rapportuer on Torture and on the Rights to Reparation