

Hon. Andrzej Duda  
President of the Republic of Poland

FIDH (International Federation for Human Rights)  
17 Passage de la Main d'Or,  
75011 Paris,  
France



**Re : FIDH calls on Polish President Andrzej Duda to veto a legislative act which would further undermine the independence of the judiciary in Poland**

Paris, Thursday, 26 July 2018

Dear Mr. President,

Yet again we appeal to you Mr. President to protect the Polish Constitution and the rule of law which it guarantees.

We call upon you, Mr. President, to veto the « Act amending the Act on the Public Prosecutors and some other Acts » which would further damage the independence of the Polish judiciary, and would be in utter violation of Poland's Constitution<sup>1</sup> and Poland's human rights commitments whether at the European Union,<sup>2</sup> Council of Europe,<sup>3</sup> or United Nations<sup>4</sup> level.

With great regret, we note that the draft act was passed through Parliament in extraordinary express mode, without a parliamentary discussion, and most importantly, does not at all address the concerns raised by the European Commission in its infringement procedure against the Law on the Supreme Court of July 2nd, 2018<sup>5</sup> but rather increases the threat posed to the separation of powers, the independence of the judiciary, and as a result to citizens' access to justice in Poland.

The European Commission had indeed expressed its strong concern « that these measures undermine the principle of judicial independence, including the irremovability of judges »<sup>6</sup> and that Poland had violated its obligations under EU law. These concerns echoed those of the U.N. Special Rapporteur on the independence of judges and lawyers in both his report following his mission to

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1 Articles 45(1) and 77(2) of the Polish Constitution of the Republic of Poland.

2 Articles 2 and 19(1) of the Treaty on European Union; Article. 47 of the Charter of Fundamental Rights of the European Union.

3 Article 6(1) of the European Convention on Human Rights.

4 Article 14 of the International Covenant on Civil and Political Rights.

5 European Commission, *Rule of Law: Commission launches infringement procedure to protect the independence of the Polish Supreme Court*, 2 July 2018, <[http://europa.eu/rapid/press-release\\_IP-18-4341\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4341_en.htm)>.

6 Ibid.

Poland<sup>7</sup> and his most recent statement in June 2018.<sup>8</sup> The Rapporteur stressed that « any reform of the judiciary should aim at strengthening the independence and impartiality of the judiciary, not at bringing the judicial system under the control of the executive and legislative branches. The reform should be the result of an open, fair and transparent process, involving not only the parliamentary majority and the opposition, but also the judiciary itself, the Office of the Ombudsman and civil society actors. »

Yet, the draft act blatantly disregards calls from both the EU and the UN, as it purports to reform the justice system in the exact opposite direction. The draft act indeed has the overt purpose of speeding up the forced and unconstitutional replacement of the first chief justice of the Supreme Court by lowering the number of appointed judges needed to appoint a new first chief justice,<sup>9</sup> a move which has prompted the launching of an infringement proceeding by the European Commission. The draft act also seeks to further ease the appointment of government-backed judges and therefore to reinforce political influence over the judiciary, in violation of the principle of the separation of powers. The measures proposed notably seek to discourage candidates from applying to the Supreme Court and the Supreme Administrative Court, reduce the scrutiny over candidates and thus allow for the appointment of unqualified candidates, allow illegally appointed judges to remain in their position even when the procedure has been ruled illegal, limit the scope of judges' self-government during assemblies of judges' representatives, and deprive retired judges of their retirement payment without condemnation for prolonged periods.<sup>10</sup>

As a result, instead of addressing the most pressing problems of the Polish justice system, this draft act violates Polish citizens' right to an independent court and further impede their access to justice.

We would like to remind you, Mr. President, that the European Commission has triggered the Article 7(1) procedure of the Treaty on European Union in November 2017,<sup>11</sup> reserved to member States which present a clear risk of a serious breach of the EU's fundamental values,<sup>12</sup> notably because of threats to the independence of the judiciary in Poland and more specifically the Law on the Supreme Court.<sup>13</sup> We would also like to bring to your attention the preliminary ruling of the European Court of Justice in Case C-216/18,<sup>14</sup> which clearly states that when the Article 7(1) procedure has been triggered in a member State (in this case, Poland), judicial authorities of other member States (in this case, Ireland) may refrain to give effect to a European arrest warrant issued

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7 U.N. Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland*, U.N. Doc. A/HRC/38/38/Add.1, 5 April 2018.

8 U.N. Office of the High Commissioner, *Poland: Reforms a serious blow to judicial independence, says UN rights expert*, 25 June 2018, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23258&LangID=E>>.

9 Currently, 110 Supreme Court judges must be appointed before a new first chief justice can be, and the draft act purports to lower this number to 80.

10 For more information on the effects of this draft act, please see: Stefan Batory Foundation, « Devastation of Poland's Supreme Court and judicial independence: the situation now, » 24 July 2018, <<http://www.batory.org.pl/upload/files/Programy%20operacyjnej/Forum%20Idei/Devastation%20of%20PL%20Supreme%20Court.pdf>>.

11 European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)).

12 As laid out in Article 2 of the Treaty on European Union.

13 European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)), paras. 4-5.

14 European Court of Justice, *Preliminary Ruling*, Case C-216/18, 25 July 2018.

by the former State (Poland).<sup>15</sup> For Irish judicial authorities to decide whether to block an extradition request from Poland, the European Court of Justice flagged as « particularly relevant »<sup>16</sup> the European Commission's findings that the rule of law situation, notably the threats to the independence of the judiciary, in Poland constitutes a real risk to EU values under Article 7(1) of the Treaty on European Union.

Dear Mr. President,

The Polish citizens will bear the consequences of your signing the « Act amending the Act on the Public Prosecutors and some other Acts » for many years.

Therefore, we appeal to you, Mr. President, to veto the « Act amending the Act on the Public Prosecutors and some other Acts ». The international community, the European Union and its member States, and Polish citizens are watching and counting on you not to disregard the heritage of the Polish fight for freedom and basic rights. We appeal to you, Mr. President, not to put the final nail in coffin of the independence of the justice system in Poland, which fate depends on you.

Sincerely,



Dimitris Christopoulos  
President, FIDH (International Federation for Human Rights)

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<sup>15</sup> Ibid, para. 73.

<sup>16</sup> Ibid, para. 61.