

## Commissioner for Human Rights of the Republic of Poland

Speech to be delivered at the 38<sup>th</sup> Session of the Human Rights Council, after presentation of the report by the UN Special Rapporteur on Judicial Independence Diego Garcia-Sayan

25 June 2018

Your Excellency, Dear Mr. President of the Council  
Excellencies,  
Dear Mr. Rapporteur,  
Ladies and Gentlemen,

The Commissioner for Human Rights is the national human rights institution in Poland, with the “A” status according to the Paris Principles. The Commissioner is highly concerned with the rule of law standards in Poland. **Without judicial review and independent courts, citizens cannot have effective protection of their rights and freedoms.**

In 2016, the independence of the Polish Constitutional Court was heavily restricted. It opened the way to adoption of legislation that restricts powers of different “checks and balances” institutions. In 2017 the government started the process of undermining, **also by public statements** and smear campaigns, of the constitutional position of the judiciary.

Under the Law on Organization of Common Courts, which entered into force in September 2017, Minister of Justice had a six-month window in which he could dismiss presidents of courts and appoint new ones, without consultation. Despite protests by some judges, almost 150 court presidents and vice presidents were replaced.

In December 2017 the Parliament managed to adopt laws regulating the status of the National Council of Judiciary and the Supreme Court. The Commissioner protested against those laws, as being unconstitutional, at different stages of their adoption.

The National Council of Judiciary, under new provisions, has been already elected. Its 15 judicial members were elected not by their peers, but by 3/5 majority in a Parliament, in a highly non-transparent way.

The Law on the Supreme Court lowers the mandatory retirement age for Supreme Court judges from 70 to 65. It means that President of the Supreme Court, who turned 65 last year, will be removed from office, even though her constitutional term ends in 2020. The same issue affects up to 40 percent of other judges. The law allows them to ask the Polish president to extend their terms. But for many of them even making such a request would constitute a violation of their judicial independence. In addition, the law increases the number of judges on the court from 83 to at least 120. This will provide the government the ability to enact a complete takeover of the court. The law also creates a new Chamber of

Extraordinary Control and Public Affairs. This will be created with new appointees only. The chamber will have the power to adjudicate on issues such as validity of elections. The Law on the Supreme Court will enter into force on 3 July 2018.

All those changes, taken **cumulatively**, create a threat to judicial independence. Judges could be subject of disciplinary proceedings, arbitrary removals, and other forms of harassment. Their future, as well as future of human rights' protection, is unclear.

It is the reason, why in July 2017 Polish people were participating in intensive public protests taking place in more than 200 Polish cities. Since those days there were numerous voices of concern issued by the international organizations, NGOs, and key figures of the Polish history. Those voices were not heard at all.

In this context, the Commissioner would like to thank the UN Special Rapporteur on Judicial Independence for its report. This report presents accurately the current situation in Poland, both in terms of institutional changes affecting judiciary, but also in terms of political pressure on judges. The Commissioner hopes that this report is another brick in the wall defending independence of Polish courts and Polish democracy.