



the global voice of
the legal profession*

Hon. Andrzej Duda
President of the Republic of Poland
Chancellery of the President of the Republic of Poland
ul. Wiejska 10
00-902 Warszawa

19 July 2017

Re: adopted amendments to the Polish Act on the National Council of the Judiciary and the Law on Common Courts Organisation

Your Excellency,

I am writing to you on behalf of the International Bar Association (IBA) to express the IBA's concern over the adopted amendments to the Polish Act on the National Council of the Judiciary and the Law on Common Courts Organisation and the potential impact this may have on the independence of the legal profession in Poland. The need for an independent judiciary and legal profession has been recognised as a critical aspect of democracy. International law reflects this by requiring that the judiciary as well as the legal profession be independent of government control or interference.

The IBA, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. Our membership includes over 190 bar associations and law societies around the world, including the Polish Bar Council and the Polish National Council of Legal Advisers. We also have more than 80,000 individual members from more than 160 countries. We have been honoured to welcome world leaders such as Prime Minister Abe of Japan, European Commission President Barroso, Prime Minister Kenny of the Republic of Ireland, former USA Vice President Al Gore and IMF Managing Director Lagarde to speak at Annual Conferences of the IBA.

With regards to the amendments to the *Act of the National Council of the Judiciary* and the *Law on the Common Courts Organisation*, the IBA is concerned that these amendments will interfere with the independence of the judiciary and, as a consequence, public confidence in the judiciary and the legal profession and rule of law of Poland will be threatened. Of particular concern

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4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090 Fax: +44 (0)20 7842 0091 www.ibanet.org

International Bar Association is incorporated as a Not-for-Profit Corporation under the laws of the State of New York in the United States of America and is registered with the Department of State of the State of New York with registration number 071114006655 - and the liability of its members is limited. Its registered address in New York is c/o Capitol Services Inc, 1218 Central Avenue, Suite 100, Albany, New York 12205.

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regarding the amendments to the *Act of the National Council of the Judiciary* is the provision for the expiry of the term of office of many current members of the National Council of the Judiciary, with their successors then being appointed by the Sejm. The amendments to the *Law on the Common Courts Organisation* cause further concern in that the authority of the Minister of Justice would be substantially increased, including enabling him/her to recall all the presidents of courts in Poland during their term of office.

The IBA would respectfully like to draw your attention to international law and guidelines that affirm the necessity of an independent judiciary and legal profession.

As you may be aware, Principle 2 of the *United Nations Basic Principles on the Independence of the Judiciary (Principles)* states that 'the judiciary shall decide matters before them impartially, (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.'

In addition, Principle 10 of the *Principles* affirms that 'any method of judicial selection shall safeguard against judicial appointments for improper motives.'

With regards to removal, Principle 18 of the *Principles* provides that 'judges shall be subject to (...) removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. Principle 20 continues in stating, 'decisions in (...) removal proceedings should be subject to an independent review.'

These important principles are also laid out in the *Universal Charter of the Role of Judges (Charter)*. Article 1 of the *Charter* states that 'the independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.' Article 2 of the *Charter* expands on the importance of judicial independence by specifying that 'the judge, as holder of judicial officer, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.'

The IBA has always put strong emphasis on the importance of the independence of the judiciary, and firmly advocates for judicial independence to be respected through its activities and programmes. This was cemented by the

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adoption of the *IBA Minimum Standards of Judicial Independence (Standards)* in 1982, which state the following:

3 a) Participation in judicial appointments and promotions by the executive or legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

4 a) The Executive may participate in the discipline of judges only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution, which is independent of the Executive.

4 b) The power of removal of a judge should preferably be vested in a judicial tribunal.

The IBA urges Your Excellency and the Polish Government to reverse these amendments, in order to guarantee that the independence of the legal profession is upheld and to protect the rule of law in Poland. It is essential that judicial professionals are protected from undue influence of any nature in the performance of their professional duties, to ensure judicial conduct adheres to the highest internationally recognised standards of impartiality and justice.

The IBA would be available to discuss our concerns with representatives of your Government at any time.

I would be grateful to receive your assurances that our concerns will be addressed as a matter of urgency.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Martin Solc', written over a light blue circular watermark.

Martin Solc
IBA President

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