

ICJ Norway
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Iwona Woicka-Żuławska
Republikken Polens Ambassade
Olav Kyrres Plass 1
0244 Oslo

Dear Ms Ambassador,

We are writing this letter to express our deep concern about the legal system of your country.

Independent and impartial courts and judges, and prosecutors, is the cornerstone in democratic societies based on the rule of law and respect for fundamental principles of human rights. Unfortunately, this basic structure seems to be undermined through constant and increasing attacks on the Polish judiciary by the executive and legislative branches of government.

This is an urgent matter, and we sincerely hope you will be willing to share your thoughts on the situation and explain it to us, as well as to the Norwegian public and the many Polish citizens living in Norway.

About the ICJ

The [International Commission of Jurists \(ICJ\)](#) is an independent and international non-governmental organization, with headquarters in Geneva. It was established in 1952, for the purpose of defending human rights and the rule of law worldwide. ICJ consist of the Commission, with 60 recognized legal experts from all parts of the world. It has 80 national sections from as many different countries.

The Norwegian section of ICJ was established in 2008, with the then Supreme Court Judge, Ketil Lund, as its first chairperson. [ICJ Norway](#) works in cooperation with ICJ Geneva and other national sections towards the same goals of rule of law, human rights and democracy in Norway as well as internationally.

Situation in Poland

Numerous national and international organizations and institutions have expressed critique of the Polish government in recent reports, judgments and statements concerned with the independence of the judiciary. This includes ICJ Geneva as well, see statement by the ICJ, [Poland: ICJ calls on Parliament to drop draft law further restricting judicial independence](#).

We consider the current situation to be most unfortunate, since the peoples of Europe and the world at large deserve societies based on rule of law, human rights and democracy. Poland is a democracy, and

we all need Poland also to reinforce the rule of law and provide effective human rights protection of the judiciary and its personnel. These are fundamental values and principles of the United Nations, Council of Europe and the European Union, all of which Poland is a prominent member state. They are also legal norms and cannot be perceived to be in conflict with the interests of Polish democracy and the Polish people and other citizens living in Poland, or with the interests of foreign corporations engaging in businesses with Polish counterparts.

On 19 November 2019, the Court of Justice of the European Union (CJEU) delivered a ruling in the case of [A.K. and others \(C-588/18, C-624/18, C-625/18\)](#), on a preliminary question by the Supreme Court of Poland. The question was whether the recently established Disciplinary and Extraordinary Chambers of the Supreme Court could be considered independent. The CJEU ruled that a court cannot be considered independent

“where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law.”

Although the language may sound a bit convoluted, the message was not. When the case continued at the Supreme Court, the Labour Chamber of the Supreme Court applied the ruling of the CJEU. It held that the Supreme Court’s Disciplinary Chamber was not an independent court.

The Labour Chamber found that the Disciplinary Chamber is not independent since its judges are appointed by the National Council of the Judiciary (NCJ). Following a recent constitutional reform, the NCJ is composed predominantly of members elected by Parliament and the executive, contrary to international standards on the independence of the judiciary.

A new draft law is now before the Polish parliament, that would put judges at risk of disciplinary action for their interpretation and application of the law, including EU and international law. Under the new proposals, judges would face disciplinary action and possibly dismissal for refusing to apply a national provision even if it is in conflict with EU law or other international legal obligations that is part of Polish law, unless it has been deemed unconstitutional by the Constitutional Tribunal.

New disciplinary offences for judges under the draft law would also include questioning the status of Polish judges, and “political engagement”. Judges would be prohibited from questioning the status of Polish courts or tribunals or constitutional organs. Furthermore, the draft law would prevent judges’ associations from adopting resolutions “expressing hostility towards other powers of the Republic of Poland and its constitutional organs”.

This seems to us be a most unfortunate and serious development away from rule of law, human rights and international cooperation, and respect for the treaty obligations of Poland.

As lawyers, it is especially difficult for us to understand how judges could lawfully and legitimately be sanctioned for seeking the advice of an international court or applying a legal rule which is both part of the Polish legal system and an international legal order of which Poland is a party to and bound to respect in domestic law and proceedings.

We hope you will help us to understand how this could be explained and justified, from the point of view of the Polish government. As you know, Norway is a party to the common EEA agreement with the EU and its member-states including Poland. The relationship between the Polish and Norwegian peoples are close and cooperation between Poland and Norway has always been good. Thus, an explanation would be of great interest to us and – we presume – the whole Norwegian society.

Invitation to discuss the matter

We would like to invite you to a meeting with ICJ Norway in Bergen, or in Oslo, preferably as soon as possible. The purpose of the meeting would be to engage in a dialogue on the Polish legal system, in particular regarding the independence of Polish judges and prosecutors from the executive branch of government in Poland.

Participating in such a meeting from us would be representatives from ICJ Norway, and representatives from the Norwegian Poland Committee. This committee was established under the leadership of ICJ Norway in 2019. It consists of representatives also from the Norwegian Judges Association, the Norwegian Lawyers Association, the Rafto Foundation (which in 2018 awarded its famous human rights prize to Adam Bodnar and the Polish Ombudsman), and the University of Bergen.

Ms. Ambassador, we are looking forward to hearing from you at your earliest convenience.

On behalf of the board of ICJ Norway and the Norwegian Poland Committee:

Sign.

Bano Abdulrahman
Executive Secretary of the
Norwegian Poland Committee

Sign.

Terje Einarsen
Professor of International Law
Chairperson ICJ Norway