

October 22, 2020

Madam Ursula von der Leyen
President of the European Commission
Rue de la Loi 200, Wetstraat 200
1049, Bruxelles, Belgium

Dear Madam von der Leyen,

Please receive warm regards, hoping that this letter finds you well and in good health. As the United Nations Special Rapporteur on the Independence of Judges and Lawyers, I would like to express my deepest concerns regarding the ongoing crisis of rule of law in Poland.

I have been closely monitoring various legislative changes to the Polish judiciary. In 2017, I officially visited the country and concluded that the independence of Poland's judicial system and other crucial democratic standards, such as the separation of powers principles were under threat. Even though the reform and modernization of judicial institutions is a legitimate objective for any government to pursue, such reform should aim at strengthening, not undermining, the independence of the justice system. In Poland, those reforms have weakened its independence and capacity to ensure checks and balances, and to protect and promote fundamental rights. Thus, any piece of legislation that regulates the functioning of the highest judiciary in a country should be subject to open and transparent debates. The latter, regrettably, has not been the case in Poland.

With great concern, over the past years, I have observed how the Polish authorities had pressed ahead with dismantling the independence of judges and lawyers and to consolidate its control over them. After completing my mission in 2017, I called on all political forces to engage in good faith in a constructive dialogue aimed at restoring the authority of the tribunal and its role as guarantor of the supremacy of the Constitution. Nonetheless, the authorities have continued undermining the work and function of the Polish judiciary through force retirements, disciplinary proceedings, and bogus claims to discourage and silence their work. All of that in flagrant breach of the United Nations Basic Principles on the Independence of the Judiciary, the United Nations Basic Principles on the Role of Lawyers, as well as due process rights recognized in various international human rights treaties.

On October 15, 2020, I presented my latest report before the at the 75th Session of United Nations General Assembly. I discussed the usage of disciplinary proceedings against judges for alleged misconduct in the exercise of their functions. Particularly, I examined what I called "disguised sanctions" imposed on judges with the aim of intimidating, harassing or, otherwise, interfering with their professional activities. I observed that, although legitimate, such disciplinary proceedings must be carried out in accordance with certain basic principles aimed at safeguarding judicial independence. Sanctions can never be imposed on judges only to interfere with the

legitimate exercise of their judicial operation. Unfortunately, Poland has recurrently utilizing such disciplinary proceedings to punish those officials, who had only conducted their judicial role according the rule of law. On so many occasions, I had publicly condemned such actions.

Last week, during the interactive dialogue before the Third Committee, I received very valuable comments of various State members representatives. Particularly, I was encouraged and honored to learn from the UN Representative of the Member States of the European Union about your commitment and support to my mandate, and the work I have done in the past years to protect and defend the independence of judges and lawyers around the world. I would like to seize this opportunity to continue this dialogue with your Excellency and offer a solid cooperation between the European Union and this UN Rapporteurship. I will always be opened to encourage more channels to continue safeguarding the work of the judiciary and the legal profession in Poland and worldwide.

Sincerely,



Diego García-Sayán

UN Special Rapporteur on the Independence of Judges and Lawyers

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