

H. E.  
Dr. Andrzej DUDA  
President of the Polish Republic  
Kancelaria Prezydenta Rzeczypospolitej Polskiej  
Ul. Wiejska 10  
00-902 Warszawa  
POLEN

Vienna, 25 July 2017

**Re: Recent legislation of the Sejm regarding the Polish judiciary**

Your Excellency,

The Austrian Association of Judges addresses you as the one who is empowered to protect the Polish people against the destruction of the independence of the judiciary, which is a fundamental necessity for each peaceful society in a state, governed by the rule of law and is therefore guaranteed to everybody by the European Convention on Human Rights.

The Committee of Ministers of the Council of Europe in 2010 including the then Polish Minister unanimously stated: “The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.<sup>1</sup> “The external independence of judges is not a prerogative or privilege granted in judges’ own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges’ impartiality and independence are essential to guarantee the equality of parties before the courts.”<sup>2</sup>

The Committee of Ministers therefore recommends: “The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers”<sup>3</sup> and “Not less than half the members of such councils should be judges chosen by their peers.”<sup>4</sup> and last but not least “Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists.”<sup>5</sup>(para 49).

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<sup>1</sup> Committee of Ministers Recommendation (2010)12 on Judges: Independence, Efficiency and Responsibilities Para 4

<sup>2</sup> idem para 11

<sup>3</sup> idem para 46

<sup>4</sup> idem para 27

<sup>5</sup> idem para 49

- The Law on the Polish National Council of the Judiciary , which provides the legislative and executive power of the state with decisive influence in the selection of the members of the Council and in the work of the Council,
- The Law on the Supreme Court. Which terminates the office of the judges of the Supreme Court and entrusts the Minister of Judges with the power to decide who may stay as judges in the Supreme Court, and
- The Law on courts and the status of Judges, which empowers he Minister of Justice to dismiss presidents of courts,

are in clear conflict with the above mentioned European standards.

The Austrian Association of Judges is grateful that you Mr. President exercised your veto against the first two laws but regrets that you didn't veto the third law, which is also to be seen as establishing an undue influence of the executive power in the judiciary.

We therefore ask you to reconsider this issue and to use your authority and influence to initiate a revision of this law in the parliament.

We also ask you to carefully watch the outcome of possible amendments to the laws, in order to put these laws in line with the above mentioned Recommendation and the case law of the European Court of Human Rights.

Respectfully Yours

Mag. Werner Zinkl

President

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