



*International Association of Judges
Union Internationale des Magistrats
Union Internacional de Magistrados
Internationale Richtervereinigung
Unione Internazionale dei Magistrati*

*The President
The Hon. Tony PAGONE*

Statement of the International Association of Judges about an application to remove the protection of judicial immunity of Judge Igor Tuleya, a serving judge, by the Disciplinary Chamber of the Polish Supreme Court due to be heard on 9 June 2020

This statement is made as President of the International Association of Judges (IAJ) representing 92 national associations of judges committed to the rule of law and to the right of litigants to have their disputes decided by judges who are independent in decision making and secure from external interference.

This statement is made with the unanimous support of IAJ's Presidency Committee composed of the President G.T. Pagone (Australia), First Vice President José Igreja Matos (Portugal), Vice Presidents Djamel Aidouni (Algeria), Rafael De Menezes (Brazil), Allyson Duncan (U.S.A.), Duro Sessa (Croatia), Mikael Sjoberg (Denmark) and Honorary President Christophe Régnard (France), as well as Secretary-General Giacomo Oberto (Italy), to express our deepest concern about an application in the Disciplinary Commission of the Polish Supreme Court to remove the judicial immunity of Judge Igor Tuleya. In particular we call upon

- i) the European Commission to seek interim measures from the Court of Justice to prevent the Disciplinary Chamber from hearing the application until the resolution of proceedings in Case C 791/19 R.
- ii) the prosecuting authority either to abandon these proceedings or to ask the Disciplinary Chamber to make a reference to the Court of Justice to rule on whether an application to the Disciplinary Chamber to strip a judge of immunity on the grounds set out in this case is compatible with European Union law.

The proceedings

On 9th June the Disciplinary Commission of the Polish Supreme Court is being invited by the deputy prosecutor to remove the judicial immunity of Judge Igor Tuleya. Judge Tuleya has been under investigation for:

- i) Making public a judicial ruling requiring the public prosecutor to continue an investigation into alleged misconduct in legislative proceedings.
- ii) Contributing to public debate on Polish legislative reforms that were considered to undermine the independence of the judiciary.
- iii) Making a preliminary reference to the Court of Justice of the European Union where questions of the compatibility of Polish law with EU law with respect to the rule of law and judicial independence were to be considered.

The CJEU have issued a number of judgments critical of Poland's compliance with EU law in particular Case C 619/18 on 24 June 2019 and Case 192/18 on 5 November 2019.

On 8 April 2020 at the instigation of the Commission the Court issued provisional measures in case C-719/19 R staying the Disciplinary Chamber of the Polish Supreme Court from hearing disciplining proceedings against Polish judges pending the resolution of proceedings as to whether it is an independent body complying with the requirements of EU law.

The importance of the rule of law and independence of judicial decision making

- i) Judicial independence is an essential cornerstone of democracy and a principle of EU law binding on all Member States of the European Union such as Poland;
- ii) Independence requires amongst other things: -
 "that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions".
- iii) At whatever level of the national judicial system, judges can (and may be obliged) to refer any question of compatibility of national law with EU to the Court of Justice for an authoritative ruling on the question.
- iv) Judges can never be subject to disciplinary or criminal proceedings for abuse of office or similar offences under national law for the good faith discharge of their judicial functions.
- v) Disciplinary proceedings can only be brought against a judge by a competent authority after a fair hearing and adjudicated on by an independent tribunal fulfilling all the requirements of both national and EU law.
- vi) There are at the least serious concerns about the independence of the Disciplinary Chamber of the Supreme Court that has led to both pending proceedings in the CJEU and an order of interim measures preventing that body hearing disciplinary proceedings pending the judgement of the Court or further order in that case.

Concerns of the IAJ

We are deeply concerned that the proceedings against Judge Tuleya seriously undermines fundamental pillars of justice which is the right of the Polish people. We are concerned that:

- i) The proceedings to strip Judge Tuleya of his immunity from criminal suit for his bona fide exercise of judicial functions including contributing to public debate on legitimate criticisms of Polish legislative measures affecting the independence of the judiciary are misconceived.

- ii) There is serious doubt about the independence of the Disciplinary Chamber which is due to hear the application.

The IAJ confirms its support to all judges in Poland, the European Union and elsewhere who fearlessly uphold and apply the principles of law including where applicable European union law, human rights law and the principles of judicial independence reflected in other international rulings and authoritative statements. Indeed, it is their duty to do so; and to do so fearlessly and without favour. The confidence of the public is necessary undermined and eroded when that is not the case.



The Hon G.T. Pagone QC

President, International Association of Judges