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To:

The European Commissioner for Justice

Mr Didier Reyndes

Vienna, 5<sup>th</sup> of June, 2020.

Honorable Sir,

We address you as we are concerned about recent events and the increased attacks against the independence of judiciary in Poland.

By **order of 8<sup>th</sup> of April 2020 of the Court of Justice of the European Union** the Disciplinary Chamber of the Polish Supreme Court must not conduct disciplinary proceedings against judges until the status of this Chamber and its independence is clarified.

However this **Disciplinary Chamber of the Supreme Court of Poland** has now issued a **summons for a (non-public) hearing against Judge Igor Tuleya** from the Regional Court in Warsaw for 9<sup>th</sup> of June 2020.

The hearing will be related to the question to **remove his immunity and open possible criminal proceedings** against him.

Background to the case is that this judge allegedly has committed an offence by allowing journalists to be present and record the oral justification of a decision (of 18<sup>th</sup> of December 2017). It is noteworthy that the case decided by judge Tuleya has concerned the allegation of fraudulent handling and vote-counting in the Polish parliament.

By allowing journalists to hear and record the justification of the decision in this case **judge Tuleya allegedly has disclosed a secret of the investigation to unauthorized personnel.**

It is argued that this hearing of the Disciplinary Chamber of the Supreme Court of Poland is not covered by the interim measures of CJEU because it is not a disciplinary procedure, but **part of a criminal procedure** (as the public prosecutor has asked to waive immunity).

We do not interfere into areas which fall into the competence of Polish judges, as the disciplinary or criminal character of such a question should be decided by independent judges.

However, specifically against the background of developments of the last years with respect to Polish judiciary we see clear **alarming signs by this new approach** to design and frame accountability of judges in general and judge Tuleya in specific. We have also been informed that he was one of the judges having referred a case to the Court of Justice of the European Union, facing now disciplinary allegations based on this fact.

It goes without saying that an **independent judiciary** is a fundament of a democratic state. In this context it is internationally acknowledged that disciplinary and criminal accountability of judges must follow certain parameters and rules in order to avoid dependence of the judge in question as well as to avoid a freezing effect on all other members of judiciary. The waiver of the immunity of a judge may have far-reaching personal consequences for the judge in question, who risks losing his or her job and a three year in jail sentence. Worse is the fear induced in all judges that a ruling contrary to interest of the executive, the legislative, or an incumbent party, may lead to reprisals of this kind.

The risk of such reprisal is obvious when we consider that in Poland the office of Prosecutor General is in the hands of the Minister of Justice Zbigniew Ziobro, who is simultaneously mastermind of the last year's judicial reforms in Poland as well as head of public prosecution in Poland.

This upcoming hearing gives the impression that this step is obviously intended to **circumvent the binding order of the Court of Justice of the European Union of 8<sup>th</sup> of April 2020** and appears to mask disciplinary allegations by criminal proceedings – to put pressure not only on an individual judge but also on all members of judiciary.

Honorable Sir, based on these considerations

- we express our deep concern about this new approach and
- we want to draw attention to these developments as the European Commission is the guardian of the treaties to ensure the European Union law properly applied in all the member states – including its fundamental basic principles of rule of law, independence of the Judiciary and separation of powers.

Yours sincerely,

A handwritten signature in blue ink, consisting of a stylized first name and a last name, positioned below the text 'Yours sincerely,'.