

RESOLUTION OF THE EUROPEAN ASSOCIATION OF JUDGES
CONCERNING POLAND

At its meeting in Nur Sultan, Kazakhstan, on 15 September 2019 the European Association of Judges – “the EAJ”- adopted the following resolution concerning the situation of the judiciary in Poland:

1. At the outset the EAJ observes that the independence of the judiciary in Poland has been under attack since the end of 2015. During this period legislative and political measures which are aimed at making the judiciary completely dependent on the executive and legislative powers have been adopted by the Polish government. This policy has been carried out by politicising the membership of the National Council of the Judiciary; by giving the Minister of Justice, who is at the same time the principal law officer *Prokurator Generalny*, the exclusive power to dismiss and appoint presidents and vice presidents of all courts in the country; by obliging judges of the Supreme Court to retire prematurely; and by initiating unwarranted disciplinary proceedings against judges in respect of judicial decisions directed to upholding the independence of the judiciary or judgments finding against the government. The Polish government consistently seeks to penalise or silence members of the judiciary whose decisions are adverse to government while rewarding or applauding those members who demonstrate compliance with its wishes.

2. The EAJ has consistently expressed its concern about these matters, for example in its resolutions on Poland of 10th May 2019, 25th May 2018, 17th October 2018 and its open letter of July 2017.

In these documents the EAJ has repeatedly called upon the authorities in the Republic of Poland to take steps to reverse and remedy these infringements of the principles of the rule of law and the independence of the judiciary.

3. The EAJ now records its ever increasing concern that far from responding positively to these resolutions, the authorities in Poland have persisted in taking measures to undermine the fundamental principles of the rule of law and the independence of the judiciary.

4. As part of that persistence the EAJ further notes and deplores the campaign instigated or encouraged by the Ministry of Justice, especially by Deputy Minister

Łukasz Piebiak, which seeks to foster public hatred and contempt against those judges who endeavour to defend the rule of law and judicial independence, including among others Judge Prof. Malgorzata Gersdorf, the president of Supreme Court, and Judge Prof. Krystian Markiewicz, the president of the Association of Polish Judges IUSTITIA.

5. The EAJ also notes recent legislation (a) giving to the Minister of Justice the power to appoint prosecutors before judicial disciplinary tribunals and the power to direct the institution of such proceedings and (b) replacing the right of appeal from a disciplinary tribunal to the Supreme Court with a review by a non-independent chamber *Izba Dyscyplinarna*.

6. Additionally and more particularly, the EAJ also notes and expresses its concern about the refusal of the chancellery *Kancelaria Marszalka Sejmu* of the lower house of parliament – *Sejm* - to give effect to the final judgment of the Supreme Administrative Court of 28 June 2019 (I OSK 4282/18) requiring the chancellery to publish the names of judges who nominated and supported the members of the newly created National Council of the Judiciary.

7. The EAJ therefore expresses its strong solidarity with Polish judges in their efforts to resist the dilution of the independence of the Polish judiciary.

8. The EAJ urges the government of the Republic of Poland:

- Immediately to bring to an end disciplinary proceedings brought against any judge based on the judge's decision to request a preliminary ruling from the Court of Justice of the European Union or the judge's delivering a judgment of which the government or its agencies disapprove;
- To review the new system of disciplinary proceedings to ensure they are independent of government and the Minister of Justice;
- To introduce procedures to amend the legislation on the National Council of Judiciary to ensure that its judicial members are elected by the judges and are not nominated by Parliament or the government; and
- Forthwith to undertake all necessary or appropriate steps to restore the independence of the Supreme Court, the Constitutional Tribunal and the Public Prosecutor's Office.

9. The EAJ also calls upon the UN Human Rights Commission, the European Parliament, the Council and Commission of the European Union, and the international community similarly to urge upon the government of the Republic of Poland the need to take the steps and measures mentioned above.