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**The Chair of the Bar  
Andrew Walker QC**

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Hon. Andrzej Duda  
President of the Republic of Poland  
Chancellery of the President of the Republic of Poland  
ul. Wiejska 10  
00-902 Warszawa

17 July 2018

Your Excellency,

We are deeply concerned about the introduction of the new Supreme Court Act ("the Act") which lowers the mandatory retirement age of Supreme Court judges from 70 to 65.

We understand that this measure will affect approximately 40% of current judges, including the First President of the Supreme Court, whose 6-year mandate has been prematurely terminated. The Act will also increase the discretionary powers of the President of the Republic in respect of the Supreme Court and its judges. Collectively, this will significantly undermine the independence of the judiciary, which poses a serious threat to the rule of law in Poland.

The dismissal of a group of judges for reasons not related to their individual conduct is a clear breach of the principle of irremovability of judges as enshrined in international law<sup>1</sup>.

In addition, we are concerned that the Act requires judges wishing to extend their term to ask the permission of the President of the Republic. There are no objective criteria established for the President's decision and no possibility for a judicial review of this decision<sup>2</sup>. The effect will be to give the executive inappropriate influence over Supreme Court judges approaching retirement age.

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<sup>1</sup> United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Hereinafter, United Nations Basic Principles, para 1.

<sup>2</sup> [http://europa.eu/rapid/press-release\\_IP-18-4341\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4341_en.htm)

**The Bar Council**

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Furthermore, the Act empowers the President of the Republic to define the structure and composition of the court<sup>3</sup>. This is wholly inconsistent with the principle of the separation of powers essential to maintaining the rule of law.

We have also read with grave concern reports of harassment and intimidation of judges who have sought to challenge the new legislation<sup>4</sup>. It is vital that judges are able to work in an environment which is conducive to independent decision making, as stated by the office of the UN Special Rapporteur on Independence of Judges and Lawyers<sup>5</sup>. Harassment and intimidation of judges are inimical to the independence of the judiciary.

We respectfully draw to your attention the UN Basic Principles on the Independence of the Judiciary, which includes the following: “The independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or the law of the country. It is the duty of all government and other institutions to respect and observe the independence of the judiciary”<sup>6</sup>.

The autonomy of courts and the independence of the judiciary are also protected in international law by Article 14.1 of the International Covenant on Civil and Political Rights, and Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to which Poland is a party.

We urge the authorities in Poland to put an end to these ongoing attacks on the independence of the judiciary, and to reconsider the measures we have identified in the Supreme Court Act.

Yours sincerely,



**Andrew Walker QC**  
**Chair of the Bar of England and Wales**

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<sup>3</sup> Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland, Human Rights Council Thirty-eighth session, 5 April 2018.

<sup>4</sup> <https://www.theguardian.com/world/2018/jun/19/theyre-trying-to-break-me-polish-judges-face-state-led-intimidation>

<sup>5</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, 11th Session of the Human Rights Council, 24 March 2009, A/HRC/11/41, para 49.

<sup>6</sup> United Nations Basic Principles, para 11 & 12.