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Mandate of the Special Rapporteur on the Special Rapporteur on the Independence of Judges and Lawyers

IN THE EUROPEAN COURT OF HUMAN RIGHTS

First Section

Application No. 43572/18
Case of Grzęda v. Poland

INTERVENTION

Pursuant to Article 36(2) of the European Convention of Human Rights and Rule 44 (3) of the Rules of the Court

By the United Nations Special Rapporteur on the Independence of Judges and Lawyers

Diego García-Sayán

A. Introduction

1. In accordance with the conditions set by the Court, the United Nations Special Rapporteur on the Independence of Judges and Lawyers (the “Special Rapporteur”) presents this submission in connection with Application No. 43572/18. Leave to intervene was granted on 15 April 2021 by the President of the Grand Chamber pursuant to Rule 44 § 3 (a) of the Rules of Court.

2. The submission provides an analysis of the applicable international human rights norms and standards relating to the composition and functioning of national judicial councils or equivalent independent and autonomous bodies established at the national level to guarantee the independence of individual judges and the judiciary as a whole. The Special Rapporteur’s mandate rests primarily on article 19 of the International Covenant on Civil and Political Rights and on the 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 (Milan, Italy, 26 August - 6 September 1985) and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

B. The Special Rapporteur

3. Special Rapporteurs are independent human rights experts appointed by the Human Rights Council to report and advise on human rights from a thematic or country-specific perspective. The Special Procedures system, of which Special Rapporteur are a part, is a central

element of the UN human rights machinery, and covers all human rights: civil, cultural, economic, political and social.

4. The mandate of the Special Rapporteur on the independence of judges and lawyers was established by the Commission on Human Rights in 1994 (CHR resolution 1994/41) and subsequently assumed by the Human Rights Council (General Assembly resolution 60/251). In June 2008, the mandate was subject to review undertaken by the Human Rights Council and extended for a period of three years. The mandate was further extended by resolutions 8/6, 17/2, 26/7, 35/11, and most recently, 44/8.

5. The Special Rapporteur is requested, *inter alia*, to identify and record not only attacks on the independence of the judiciary, lawyers, and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations, including the provision of advisory services or technical assistance when they are requested by the State concerned.

6. The Special Rapporteur also conducts country visits upon the invitation of the relevant Government. Following the visit, the Special Rapporteur submits a report on the visit to the Human Rights Council, presenting findings, conclusions, and recommendations.

7. This intervention is submitted to the European Court of Human Rights by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials, and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorisation for the positions and views expressed by the Special Rapporteur, in full accordance with his complete independence, was neither sought nor given by the UN, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or officials associated with those bodies.

C. United Nations Official Mission to Poland, 2017

8. As referred above, in my capacity as Special Rapporteur, I conducted an official mission to Poland in October 2017 following the invitation of the Government of Poland. During this visit, the Special Rapporteur met with government and legislative officials, judges, lawyers, and prosecutors in Warsaw, such as of the Ministry of Foreign Affairs, the Ministry of Justice, the Chancellery of the President of the Republic, the *Sejm*, the Senate, the National Council of the Judiciary, the General Prosecutor's Office and the National Prosecution Council as well as active and retired judges of the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court, and the common court system. The Special Rapporteur also had insightful conversations with academics and representatives of civil society, including the Commissioner for Human Rights (Ombudsman), UN agencies and regional organisations¹.

9. During the visit, the Special Rapporteur examined various issues related to this mandate according to binding sources of international human rights law, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. Both

¹ See "Preliminary Observations on the official visit to Poland (23-27 October 2017)" by United Nations Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego García-Sayán on October 27, 2017. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22313&LangID=E>

instruments guarantee the right to a fair hearing in judicial proceedings before “an independent and impartial tribunal established by law”.

10. With great concern, this Rapporteurship observed that since 2015 the Polish government launched a campaign aiming at discrediting the authority of the judiciary and its governance bodies. In Preliminary Observations, the Special Rapporteur emphasized how the independence and the legitimacy of judges have been seriously undermined, including the National Council of the Judiciary². The Polish judiciary has lost its legitimacy to ensure an effective review of the constitutionality of legislative acts adopted by the legislator. This ongoing situation casts serious doubts over its capacity to protect constitutional principles and to uphold human rights and fundamental freedoms.

11. In those Preliminary Observations, this Rapporteurship condemned the public campaign against the judiciary that accompanied the implementation of the judicial reform. The negative and unfair rhetoric against judges that has increased public distrust and lack of confidence in the judiciary as an institution.

12. Following the official visit, the Special Rapporteur presented a comprehensive report and formulated recommendations to and through the Human Rights Council in June 2018. The Special Rapporteur then noted—with the same concern that he expresses today before this Honorable Grand Chamber—, that the independence of the Polish judiciary and other crucial democratic standards are under threat for several reasons³.

D. The Essence of Judicial Independence

13. The principle of the separation of powers, the heart of any country’s constitutional scheme, empowers the judiciary to perform this role fearlessly, effectively, and independently. An efficient, independent, and impartial judicial system is essential for upholding the rule of law and ensuring the protection of human rights and fundamental freedoms. This principle reflects a sharp sensitivity to interference from any branch in its fundamental role under the Constitution. The executive, the legislature and the judiciary constitute three separate and independent branches of government. The Constitution, laws and policies of a country must ensure that independence.

14. The independence of the judiciary is enshrined in several international and regional human rights treaties to which Poland is party, including the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Both instruments provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law.

15. As a member State of the European Union, Poland is also bound to respect and implement European Union treaties and the values they enshrined, including respect for the rule of law and human rights (art. 2 of the Treaty on the European Union). Article 47 of the European Union Charter of Fundamental Rights, which is binding on Poland, reflects fair trial requirements relating to an independent and impartial tribunal previously established by law.

² *Idem*.

³ See “Report on the mission to Poland” presented by the UN Special Rapporteur on the Independence of Judges and lawyers, Mr. Diego García-Sayán, before the Human Rights Council on the thirty-eighth session in July 2018. (A/HRC/38/38/Add.1). Available at <https://undocs.org/A/HRC/38/38/Add.1>

16. The UN Basic Principles on the Independence of the Judiciary (UN Basic Principles) spells out the measures that States must adopt to secure and promote the independence of judges and magistrates⁴. According to the UN Basic Principles, the independence of the judiciary shall be enshrined in the Constitution or the law of the country, and it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1). The judiciary shall decide matters before them impartially, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason (principle 2). The Principles also provide guidance on a series of further requirements, including qualifications and selection of judges (principle 10), conditions of service (principle 11), *security of tenure* (principle 12) and *disciplinary, suspension or removal proceedings* (principles 17–20)⁵.

17. Even though, the Constitution of Poland recognizes international treaties as sources of universally binding law, the government has proceeded in clear violation to those relevant international law standards. In fact, the Polish authorities, as established in the report presented at the Human Rights Council of the United Nations, are successfully undermining the institutionality of the Polish judiciary and its judicial governance authorities, including the National Council of the Judiciary⁶.

18. As Special Rapporteur I am deeply concerned about the ongoing constitutional crisis, which has been developing at a fast pace since soon after the political elections of October 2015 until these days. As such, this Rapporteurship deems relevant to present before this Honorable Grand Chamber the essence of the official findings, conclusions and recommendations made at the United Nations with regards to the serious rule of law crisis in Poland.

E. The use of judicial reform to attack the judiciary

19. In various reports, the Special Rapporteur has acknowledged that the power of the Government to undertake reforms to the judiciary cannot be questioned⁷. It is an undeniable fact that the judiciary requires to be modernized, strengthened and subject to some reforms, to address contemporary challenges and issues that currently affect the judicial power operation and outcomes. Nonetheless, any reform of the judicial system should aim at improving its effectiveness, not at undermining the independence and legitimacy of the judiciary and its governing bodies.

20. When assessing the situation in Poland in 2017, the Special Rapporteur manifested, however, that the series of reforms undertaken by the Government, presented as a cure, appeared to have been worse than the disease. The package of judicial reforms has greatly affected the Polish judiciary, including the so-called Act on the Common Court Organisation, Act on the Prosecution Services, and the Act on the National Council of the Judiciary.

⁴ 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.

⁵ See Report on the “35th anniversary of the Basic Principles on the Independence of the Judiciary” by UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego García-Sayán before the General Assembly, on July 16, 2019. (A/74/176). Available at <https://undocs.org/A/74/176>

⁶ Articles 9 and 87 (1) of the Constitution of Poland.

⁷ Report on the “35th anniversary of the Basic Principles on the Independence of the Judiciary” by UN Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego García-Sayán before the General Assembly, on July 16, 2019. (A/74/176). Available at <https://undocs.org/A/74/176>

21. In 2017, several of the Special Rapporteur's interlocutors – including Polish judges – additionally referred to the length of judicial proceedings and the enormous backlog of cases as part of the major problems affecting the Polish judiciary. Other interlocutors referred to cases of some judges lacking impartiality, cronyism, and described some episodes of corruption. None of these issues were addressed in those reforms whose purpose pursued a different objective.

22. After the political elections held in October 2015, the ruling parliamentary majority, the Government, and the President of the Republic put in place a coordinated set of actions and adopted a vast array of legal amendments to the legislation that regulates the functioning of the judiciary.

23. In July 2017, the Government submitted a legislative package of three bills aimed at modifying the composition and functioning of ordinary courts, the Supreme Court, and the National Council of the Judiciary. On 25 July, the President of the Republic signed the Act amending the Act on Common Courts Organisation into law but decided to veto the other two bills following the widespread public protests the judicial reform package. However, in September, the President presented two new draft acts, on the Supreme Court and on the National Council of the Judiciary, to the *Sejm*. As noted in the 2018 Report, even though the acts included some of the concerns voiced by national and international actors, the general direction of the reform remained unchanged: to collapse of the Polish judiciary.

24. Since then, this Rapporteurship has raised concerns as to such reforms' compliance with international legal standards relating to the independence of the judicial system, including the United Nations Basic Principles on the Independence of the Judiciary⁸. As part of the United Nations' findings, the Rapporteurship underlined that the various legislative acts and measures adopted or proposed by the executive and legislative have severely undermined the independence of the judiciary and have eroded the possibilities of checks and balances between branches of government. Over the past years, the Polish government has weakened the appointment of constitutional judges; the implementation of judgments of the Constitutional Tribunal, and it has adopted "remedial" statutes aiming at paralyzing the Tribunal's effectiveness as well as the National Council of the Judiciary's⁹.

25. Based on the information made available during the mission to Poland, this Rapporteurship described in depth to the Human Rights Council, how these amendments constituted a serious breach of the principle of independence of the judiciary. Despite the fact that, the Constitution empowers the judiciary to review all issues of a judicial nature, the Polish government has consistently disrespected and destabilized the independence of the judiciary in Poland.

26. Another area of great concern included in the report presented to the Human Rights Council was the selective criteria at the executive to publish -or not- the judgments of the Constitutional Tribunal. This arbitrary selectivity affects the effect and validity of its judgments

⁸ Similar recommendations were made by several international and regional bodies, such as the Human Rights Committee, the Venice Commission, OSCE/ODIHR and the European Commission, should be considered in the development and implementation of legislative and other measures to strengthen the effectiveness and impartiality of the judiciary.

⁹ In 2016, the *Sejm* adopted three new acts on the work of the Tribunal: (a) The Act of 30 November 2016 on the Legal Status of Judges of the Constitutional Tribunal; (b) The Act of 30 November 2016 on the Organisation of and Proceedings before the Constitutional Tribunal; (c) The Act of 13 December 2016 implementing the Act on the Organisation of and Proceedings before the Constitutional Tribunal and the Act on the Legal Status of Judges (the "Implementing Act").

which “in no case depend on the goodwill of the executive or the legislative branch”. The fact of having been elected does not give the Government a monopoly of legitimacy, nor does it grant it any right to exercise control over the court that, in accordance with the Constitution, guarantees appropriate checks and balances among the different State branches¹⁰. This situation still prevails as indicated in the facts of the present case.

F. The National Council of the Judiciary under attack

27. Judicial governance are the set of institutions, rules, and practices in a jurisdiction that organize, facilitate, and regulate the exercise by the judicial branch of its function of the application of law to concrete cases. Judicial governance comprises a wide range of functions, from allocation of resources and the judicial budget to the oversight of the quality of the system and from the control of judicial careers to the allocation of cases to judges, among others. Such functions are usually performed by judges serving in Judicial Councils.

28. In Poland, the National Council of the Judiciary consists of 25 members, including “15 judges chosen from among the judges of the Supreme Court, common courts, administrative courts and military courts” (art. 187 of the Constitution). The Council also includes three ex officio members (the Minister of Justice, the First President of the Supreme Court, and the President of the Chief Administrative Court) and seven members appointed by the executive and legislative branches (one individual appointed by the President of the Republic, four members chosen by the Sejm and two members chosen by the Senate). The term of office of the members of the National Council is four years¹¹.

29. The 20th century witnessed the emergence of an important, structural change in the way European countries had thus far understood the relationship between politics and the court system. Until that time, the governance of the judiciary had been mainly a responsibility of the executive and more particularly of the Ministry of Justice. However, at least since the end of the World War II and, as well, after the Cold War, concerns about judicial independence, judicial accountability, and a better judicial performance have started to alter this scenario. Ministries of Justice gradually lost their monopoly on judicial governance, and in many countries, separate institutions with powers over the careers of judges or the management of the judiciary have been born.¹²

30. However, that trend was not fully incorporated into the Polish legal framework. In fact, the power of the Polish Minister of Justice to decide, on a case-to-case basis, the prolongation of the mandate of individual judges until the age of 70 is equally problematic. It allows the Minister to exert influence over individual judges, thereby undermining their independence¹³.

31. Judges who are dependent in some way upon the person who appoints them cannot be fully relied upon to deliver neutral, legitimate, high-quality decisions. Legal systems have devised a wide range of selection mechanisms in practice, often trying to balance independence with

¹⁰ *Supra*, “Report on the mission to Poland” presented by the UN Special Rapporteur on the Independence of Judges and lawyers, Mr. Diego García-Sayán”, para. 36.

¹¹ *Idem*, para. 64.

¹² Pablo Castillo-Ortiz, “The Politics of Implementation of the Judicial Council in Europe”, Published online by Cambridge University Press, 06 December 2019.

¹³ *Supra*, “Preliminary observations on the official visit to Poland (23-27 October 2017)” by United Nations Special Rapporteur on the independence of judges and lawyers, Mr. Diego García-Sayán on October 27, 2017.

accountability through institutional design, often insulating judicial selection from partisan politics.

32. International standards, including the UN Basic Principles, provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, and to adopt all appropriate measures to ensure that judges can decide matters before them impartially and without any improper influences, pressures, or interferences.

33. To guarantee judicial independence, some countries have created self-governing judicial bodies, such as judicial councils, to protect and promote the independence and the autonomy of the judiciary. The underlying rationale for their creation was the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch of power¹⁴.

34. As key judicial bodies, judicial councils are called to play a pivotal role in ensuring judicial independence. The judicial councils often function as intermediaries between Government and the judiciary and operate autonomously within the judicial systems of their respective jurisdictions to guarantee, *inter alia*, the maintenance of the rule of law and the protection and promotion of human rights and fundamental freedoms.

35. Since the establishment of the mandate, several Special Rapporteurs have highlighted the crucial role that judicial councils play in guaranteeing the independence of the judiciary and recommended to the member States the establishment of an independent body in charge of the selection and discipline of judges and adopt appropriate measures to guarantee a plural and balanced composition¹⁵.

36. Establishing a judicial council through a constitutional provision emphasizes the vital role that such a council plays as a guarantor of judicial independence, especially in countries in the process of consolidating democratic institutions. A constitutional provision and its strict respect would grant the newly-created institution “the legitimacy of constitutional recognition and may help insulate it from interferences from the executive, legislative or judiciary through legislation, decrees or rulings”¹⁶.

37. With high indifference to the standards established by the United Nations, the Polish government passed a second Act—but this time, targeting the operation and composition of the National Council of the Judiciary. The main objective of the new “Act on the National Council of the Judiciary” was to amend the procedure for the selection of the judicial members of this institution, which is mandated in Article 186 of the Constitution to safeguard the independence of the judiciary¹⁷.

¹⁴ See “Report on Judicial Councils” of the Special Rapporteur on the independence of judges and lawyers Mr. Diego García-Sayán”, presented before the Human Rights Council, May 2, 2018 (A/HRC/38/38) Available at <https://undocs.org/A/HRC/38/38>

¹⁵ See A/HRC/11/41, paras. 24–30 and 97; A/HRC/26/32, paras. 88–93 and 125–126; see A/HRC/14/26, para. 53; A/HRC/35/31/Add.1, A/HRC/32/34/Add.1, A/HRC/23/43/Add.3 and A/HRC/23/43/ Add.1

¹⁶ Violaine Autheman and Sandra Elena, Global Best Practices: Judicial Councils — Lessons Learned from Europe and Latin America, Rule of Law White Paper Series, No.2 (Arlington, International Foundation for Electoral Systems, April 2004), p. 7.

¹⁷ *Supra*, “Report on the mission to Poland” presented by the UN Special Rapporteur on the Independence of Judges and lawyers, Mr. Diego García-Sayán”, para. 63.

38. This Rapporteurship also exposed how the amendments have curtailed the independence of the judiciary, and of the National Council of the Judiciary¹⁸. The amendments introduced new rules for appointing and dismissing court presidents, who perform important managerial duties in addition to their judicial functions. The Minister of Justice acquired wide and discretionary powers to appoint and dismiss court presidents. The situation turned more concerning when “six months” after the entry into force of the amendments, the Minister of Justice was empowered to dismiss presidents and vice-presidents of the common courts and to appoint their replacements at his own discretion, and without any form of judicial review.

39. Based on the information available to this Rapporteurship, the United Nations also uncovered how the amendments also introduced a new ground for dismissal which could easily be abused to remove judges at the Minister’s discretion and provide to the Minister unfettered power to appoint new court presidents without any obligation to obtain the approval of the general assembly of the court concerned or the National Council of the Judiciary. The National Council of the Judiciary’s role was seriously curtailed in overt violation of the principle of judicial independence, as it has been indicated in the present case.

40. During my official visit to Poland, as Special Rapporteur I documented in the 2018 Report, the United Nations’ concern that the new Act on the National Council of the Judiciary would allow the legislative to influence the selection of judges with the result of undue political interference in the overall administration of justice.

41. The greatest preoccupation derived from the language of Article 5 of the above mentioned Act, which terminated the mandate of the fifteen judges, who were serving on the Judicial Council 30 days after the entry into force of the Draft Act. Such termination was arbitrary, capricious and, clearly, unconstitutional, constituting a manifest breach of fundamental principles acknowledged in the UN Basic Principles and other international human rights standards, which recognize judicial safeguards and the right to a fair and public hearing, and the right to access and impartial and independent tribunal.

42. As Special Rapporteur I also noted that such automatic termination based only on changes to legislation directly interfered with the guarantees of independence enjoyed by this duly constituted constitutional body. The Constitution guarantees that the term to serve as judge member of the Council is four years. The abrupt termination by a legal provision violated the Constitution and the international standards for the protection of judicial independence.

43. This Rapporteurship would like to emphasize that international standards establish that “judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.”¹⁹

44. On occasion of my official visit as Special Rapporteur I also received preoccupying information on the refusal by the President of the Republic to appoint persons appropriately selected in 2016 by the National Council of the Judiciary. While legitimate reasons may eventually exist not to appoint a specific individual, the decision of the President, for instance, of 22 June

¹⁸ *Idem*, para. 65.

¹⁹ See Article 2 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. Also, the European Standards of the Independence of the Judiciary, Venice Commission, Strasbourg, October 3, 2008.

2016 to not appoint a complete group of candidates generated serious concern. The Special Rapporteur dispatched various communications to the President of the Republic asking him to provide with the grounds for that refusal. However, no official response was ever received.

G. Judicial Safeguards for judges serving in Judicial Councils

45. The Special Rapporteur has stated on several occasions that judicial councils play a crucial role in guaranteeing the independence of the judiciary and should themselves be independent. Judicial Council should be free from any form of interference from the executive and legislative branches²⁰. To ensure that such a body discharges its functions in an objective, fair and independent manner, the judiciary must have a substantial say with respect to selecting, appointing the members of such a body, and dismissal of their members always following the international standards of human rights, including the due process of law guarantees. For example, Article 14 of the International Covenant on Civil and Political Rights (1966), which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

46. The protection of judges from arbitrary removal, together with other guarantees of judicial independence, has long been recognized as an essential element of a constitutional system of government in many parts of the world²¹. The United Nations has recognized that judges, including those appointed to national judicial councils should be protected with the same guarantees as those granted to judges exercising jurisdictional functions, including the conditions of service and tenure and the right to a fair hearing in case of discipline, suspension, and removal.

47. The UN Basic Principles recognizes that “judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists”²². Similarly, the Universal Charter of the Judge mandates that “a judge cannot be transferred, suspended, or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure”²³.

48. Similarly, Principle 17 of the Basic Principles mandates that “a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge”.

H. United Nations’ assessment on the rule of law situation in Poland

49. The independence of justice has been under serious attack in Poland. The Special Rapporteur has, then and now, stressed that the judicial reform advocated and implemented by the Polish Government has had adverse effects on the independence of its judicial system.

50. The United Nations underlines that any long-lasting solution to the constitutional situation that Poland is facing today should be firmly rooted on the principles of the independence

²⁰ See A/HRC/11/41, para. 29.

²¹ Eliot Bulmer, *Judicial Tenure, Removal, Immunity and Accountability*, International Institute for Democracy and Electoral Assistance (International IDEA), 2017.

²² See Principle 12 of the UN Basic Principles on the Independence of the Judiciary.

²³ Article 8 of the Universal Charter of the Judge.

of the judiciary and the separation of powers and consider previous rulings of the Constitutional Tribunal, such as those of 3 and 9 December 2015²⁴.

51. The Special Rapporteur wishes to emphasize that any reform of the judiciary should aim at strengthening, not at undermining, the independence of the justice system and its actors. The independence of the judiciary and the separation of powers must constitute the guiding principles of any countries' judicial reform.

52. Finally, this Rapporteurship considers relevant to extend the application of the principle of irremovability of judges to those constitutionally appointed as members of the National Council of the Judiciary and afford them the judicial safeguards provided in various international human rights standards, including the United Basic Principles on the Independence of the Judiciary.

I. Conclusion

53. The present case offers an opportunity for this Honorable Grand Chamber to provide not only guidance on the scope and application of the principle of judicial independence, but also to show a strong message the executive and legislative branches of Government to refrain from negative rhetoric against judges or the judiciary. Any attack on the judiciary as an institution constitutes a flagrant breach of the principle of judicial independence and is not acceptable in a democratic State governed by the rule of law.

Yours faithfully,



Diego García-Sayán
United Nations Special Rapporteur on the Independence of Judges and Law

²⁴ *Supra*, “Preliminary observations on the official visit to Poland (23-27 October 2017)” by United Nations Special Rapporteur on the independence of judges and lawyers, Mr. Diego García-Sayán on October 27, 2017.