

Dr hab. Tomasz Przesławski

Supreme Court/ Disciplinary Chamber

Supreme Court of the Republic of Poland

Dear Professor Przesławski,

I am writing to you on behalf of the Human Rights Committee of the European Criminal Bar Association (ECBA), which connects and represents defence lawyers from all over Europe. The ECBA places great emphasis on respect for human rights and the rule of law.

Since its foundation in 1997 the ECBA has become the pre-eminent independent organization of specialist defence lawyers in all Council of Europe countries. The ECBA aims to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons.

The ECBA consists of specialist defence lawyers in the member countries of the Council of Europe. Membership is open to all lawyers, whether practising or in academic life, who support those aims. Although wholly independent, the ECBA has close links with the CCBE and the ICB.

The ECBA writes to express its concerns over the proceedings instigated against Judge Igor Tuleya. According to the information and reports received by the ECBA, the proceedings are aimed at waiving his immunity in order to press criminal charges for illegally publicly pronouncing his judgment issued on 18 December 2017 in which he ordered an investigation concerning possible crimes committed during the session of the lower chamber of Parliament in December 2017. Judge Igor Tuleya is to be arraigned because he pronounced his verdict in the case publicly, although the proceedings had been closed to the press and public.

In this context, the ECBA wishes to emphasize that the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights, guarantees that, even if the press and public are excluded from all or part of the trial (on specific grounds, expressly defined in the ECHR), the judgment shall be – without exception – pronounced publicly. The same unequivocal guarantee of fair trial is also enshrined in Article 45 section 2 of the Polish Constitution.

The principle of publicising judicial decisions is a strong institutional guarantee and at the same time a form of manifestation of “judicial transparency”.

In that sense, publicising a judgment can be said to be a guarantee of independence of judges and their subordination only to the law, which are prerequisites for an unbiased, full and complete investigation of all the circumstances of the case and for making a legitimate, fair judicial decision.

In light of these constitutional and treaty provisions, which are both directly applicable by all common courts and which both take precedence over any lower-level statutory norms, the charges to be brought against Judge Tuleya in our view impermissibly contravene crucial provisions of both domestic and international law.

Furthermore, the ECBA wishes to draw your attention to the interim measures ordered by the Court of Justice of the European Union by its decision of April 8, 2020 in case C-791/19 Commission v. Poland, that, according to the correct assessment, apply directly to the current case. Since the Disciplinary Chamber, according to the above decision, is precluded from hearing any disciplinary cases against judges, it should also – a fortiori – refrain from hearing any cases concerning judges' criminal liability, like in Judge Igor Tuleya's case.

In view of the above, the ECBA urges the authorities for the case against Judge Igor Tuleya pending before the Disciplinary Chamber of the Supreme Court to provide a fair and impartial examination, in full compliance with domestic and international law, as described above.

In addition, the ECBA calls for all the necessary measures within your power to be undertaken, to guarantee the independence of the judiciary and, specifically, that all judges in Poland are able to perform their duties without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter and for any reason, in order to preserve the integrity of the administration of justice and the rule of law.

Alexis Anagnostakis, the ECBA Human Rights Officer

*Alexis A. Anagnostakis*

Vincent Asselineau, Chair of the ECBA

