



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**Mr Mateusz MORAWIECKI**

Prime Minister of the Republic of Poland  
Warsaw, Poland

Strasbourg, 19 January 2018

Dear Prime Minister,

Please accept my congratulations on your appointment and my best wishes for success in your work and important role as President of the Council of Ministers in Poland.

Throughout my mandate as Commissioner for Human Rights of the Council of Europe, I have attentively followed the situation in Poland. Since my last full visit in February 2016, I have travelled several times to Warsaw, most recently in early December 2017. On those occasions, I met with national human rights institutions, human rights defenders, non-governmental organisations and Government officials to discuss various human rights issues. As we have not yet met, I would like to use this opportunity to bring to your attention some of my concerns regarding the key topics that have retained my attention in connection with my last visit.

The most topical human rights issue for me as regards Poland last year was the independence of the judiciary. The role played by the judiciary has significant ramifications for virtually all aspects of life. Without an independent and efficient judiciary, there can be no talk of a level playing field in the relations between the citizen and the State and in private disputes, and little guarantee of dependability of a country's legal system for its partners abroad. This is why I was disappointed to witness, during my last visit to Poland and on the day of your designation as Prime Minister, that the Polish Sejm adopted two laws that I and a number of other actors and institutions regard as highly problematic.

The adopted amendments to the Act on the National Council for the Judiciary cut short the constitutional tenure of fifteen judges sitting on the Council and gave the power to elect new ones to the Sejm, effectively affording the legislature the decisive say on the election of judges serving on common and administrative courts. These provisions essentially reproduce the ones I already cautioned against in my letter of 30 April 2017 to the Speaker of the Sejm, finding them likely to undermine the well-established principles of the separation of powers and judicial independence enshrined in the Polish Constitution and the international human rights obligations by which Poland is bound. These measures were also found to be problematic by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in its opinion issued in May 2017, which found that they "*risk (...) increasing political interference in judicial administration, with as a consequence possible negative effects for the independence of the judiciary in Poland*". More recently, the European Commission for Democracy through Law (the Venice Commission) concluded in an opinion adopted on 8-9 December 2017 that they "*will lead to a far reaching politicisation of [the National Council for the Judiciary]*".

The other adopted amendments to the Act on the Supreme Court foresee the retirement of all serving Supreme Court judges older than 65, including the Court's First President. Among other measures, the new amendments introduce an "extraordinary appeal" procedure, allowing for a retroactive review of any final court judgment handed down by courts in the last 20 years, and create a special chamber to hear disciplinary cases against judges. These new amendments have been criticised not only by the Supreme Court itself, but also by judges' associations, the National

Bar Association, the Polish Ombudsman, the European Commission, the ODIHR, the Venice Commission, as well as by many legal scholars and domestic and international civil society organisations. The UN Special Rapporteur on the independence of the judiciary, who visited Poland in October 2017, found that they “*risk hampering the capacity of judicial authorities to ensure checks and balances and protect and promote human rights*”. An ODIHR opinion issued on 13 November 2017 concluded that a number of these new provisions are “*inherently incompatible with international standards and would seriously undermine the separation of powers and the rule of law in Poland*”. In its above-mentioned opinion, the Venice Commission remarked inter alia that the proposed system of retroactive extraordinary review was “*dangerous for the stability of the Polish legal order*”, and that “*the early removal of a large number of justices of the Supreme Court (including the First President) by applying to them, with immediate effect, a lower retirement age, violates their individual rights and jeopardises the independence of the judiciary as a whole*”. The Venice Commission also stressed that the combination of the changes proposed by the two adopted laws and two other recently-amended laws (the Act on the Organisation of Ordinary Courts, amended in 2017, and the Act on Public Prosecutor’s Office, amended in 2016, which merged the office of the Public Prosecutor and the function of the Justice Minister and vested it with far-reaching prerogatives) “*amplifies the negative effect of each of them to the extent that it puts at serious risks the independence of all parts of the judiciary in Poland*”.

An overhaul of the judicial system is a fundamental matter that requires reflection, consultation and time. I must therefore reiterate my concern, which I already raised in my last country report on Poland, about the hasty process for adopting such key pieces of legislation, without an inclusive debate. This has been evidenced during the Sejm proceedings on draft amendments to the Act on the Supreme Court in July 2017, or in early December 2017 when Sejm committee hearings took place late at night without the participation of key stakeholders. Equally worrying to me was the fact that the legislative process related both to the Act on the National Council for the Judiciary and the Act on the Supreme Court has been accompanied by a campaign presenting Poland’s judiciary as fundamentally corrupt and dysfunctional.

I fear that judicial independence is at risk in Poland today. I believe that these laws will indeed further undermine the independence of the judiciary by subordinating it to the executive and the legislature and further erode the separation of powers and the rule of law. I regret that despite the many concerns raised, both bills were adopted by the Senate with no amendments and signed by the President.

This is why I would be very interested in hearing your perspective, as Poland’s new Prime Minister, on how the Polish authorities intend to implement the new provisions, while retaining legal certainty and the protection of constitutional human rights and freedoms, including those stemming from the European Convention on Human Rights, and other international human rights instruments by which Poland is bound. I would also be keen to know if the Polish authorities intend to follow the above-mentioned recommendations of the Venice Commission.

Another issue which I regularly address in my country work and which is of direct relevance for Poland are women’s sexual and reproductive health and rights. In my 2016 report on Poland, I made a number of recommendations regarding women’s access to sexuality education, contraception and safe and legal abortion care. My observations and recent exchanges with interlocutors in Poland left me with the impression that the situation in all these fields has worsened since the publication of my report. In particular, I have learned that the provision of comprehensive sexuality education that is respectful of relevant human rights standards is still not ensured. I have also been informed of the recent reintroduction of the requirement that all women obtain medical prescriptions for emergency contraception, abolishing previous policies that had allowed the purchase of some forms of emergency contraception over the counter in pharmacies. This is a move that goes against the recommendation I made to remove barriers in access to contraception for all women in Poland.

Concerning access to safe and legal abortion, as already stressed in my country report, Poland has one of the most restrictive laws on abortion in Europe, permitting abortion only when there is a risk to a woman's health or life, a severe foetal impairment, or the pregnancy is the result of sexual assault. The health and human rights implications for women living in countries with such restrictive laws are acute. Most women who decide to end a pregnancy travel to another country to obtain safe and legal abortion services or undergo illegal clandestine abortion at home. Some women may be left with no choice but to carry a pregnancy to term against their will. Even in those limited circumstances where abortion is legal in Poland, women still face barriers in access to safe abortion care. In particular, in several regions in Poland women are often unable to obtain an abortion due to refusals of abortion care by doctors on the grounds of conscience. Three leading cases against Poland before the European Court of Human Rights concerning effective access to legal abortion care (*Tysi c v. Poland*, Application No. 5410/03; *R.R. v. Poland*, Application No. 27617/04; and *P. and S. v. Poland*, Application No. 57375/08) have led to rulings finding a violation of Article 8 (right to respect for private and family life) and, in two of these cases, a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, and their full execution remains outstanding. In order to protect the human rights of women and girls throughout the country, Poland should guarantee access to safe and legal abortion care by: ensuring that abortion is legal on a woman's request in early pregnancy; and thereafter throughout pregnancy to protect women's health and lives and ensure freedom from ill-treatment; removing residual procedural requirements applicable to legal abortion services; and ensuring that refusals of care by health care workers do not jeopardise women's timely access to abortion care. I have been informed that a citizens' bill aiming at liberalising access to abortion care has recently been rejected by the Polish Sejm while another one, which aims at making the current provisions even more restrictive, was allowed to proceed. I must therefore stress that the principle of non-retrogression should be respected and I would urge the authorities to repeal and reject any laws and policy proposals that seek to introduce new barriers to women's access to safe abortion services.

I regret that during my last visit I did not have the opportunity to discuss these issues with the Minister of Health, but I would like to draw your attention to the Issue Paper that I have published on women's sexual and reproductive health and rights in Europe which contains my recommendations to all member states of the Council of Europe on how to guarantee women's sexual and reproductive rights as intrinsic elements of the human rights framework.

A related issue which I would like to raise with you, as part of my special mandate of protecting human rights defenders, is the situation of NGOs active in the areas of women's rights and assistance to victims of domestic violence. In early November, I followed with particular concern the searches carried out by the Polish police in the premises of several NGOs assisting women victims of violence only a day after a major women's march. Reportedly, the searches, justified by the need to recover documents related to public funding granted in previous years by the Ministry of Justice, were in some locations carried out in the presence of clients, and led in some cases to the confiscation of work equipment and documentation containing private data of victims of domestic violence. Such public searches could have a chilling effect on the NGOs and women in need of assistance. NGOs play an important role in a democratic society, and the essential importance of NGOs active in combating violence against women is recognised by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which Poland ratified in 2015. They should therefore be able to pursue their function in an environment conducive to their work, without undue and disproportionate interference in their functioning.

In my country report, I already raised concerns that funding for shelters for women victims of violence in Poland was insufficiently stable and permanent. The situation seems to have worsened in recent months. Several well-established NGOs active in this field signalled that they have recently begun experiencing difficulties in accessing public funding due to tenders being geared towards organisations with more limited experience. I am concerned that the signalled lack of predictability as to the access to public funding may discourage some NGOs from applying for such funds, hindering their activities or threatening their financial viability. Many established NGOs in Poland have extensive, often decades-long expertise in providing shelter and assistance to victims

of domestic violence, and their clients would be severely disadvantaged if they were to be deprived of that expertise. I was pleased to hear that you have touched upon the issue of violence against women in your address to the Sejm in December, and I would also be keen to hear how you and your Government envisage ensuring Poland's continued and effective implementation of the Istanbul Convention, which obliges states to support and encourage the work of relevant non-governmental organisations, enabling them to carry out their work in the best possible way, including through unhindered access to public funding. This also implies protecting established organisations active in this field and supporting their activity.

Lastly, my mandate obliges me to share with you my concern regarding the repeated public accusations levelled in recent times against the Polish Ombudsman by some politicians, including members of the Government, claiming that he is engaging in political activity or even calling openly for his dismissal. I would be most grateful if I could count on your leadership in helping to discourage such verbal attacks in future. The independence and the effectiveness of the Polish Ombudsman, an institution accredited at the highest level by the Global Alliance of National Human Rights Institutions, must be preserved, and the Polish authorities should do their utmost to support and protect the office and the office-holder.

I stand ready to discuss all these matters further with you and other members of your Government. I would also be grateful if you could ensure that all members of the Government receive a copy of this letter.

Yours sincerely,



Nils Muižnieks