



NEW YORK  
CITY BAR

ROGER JUAN MALDONADO  
**PRESIDENT**  
PHONE: (212) 382-6700  
FAX: (212) 768-8116  
rmaldonado@nycbar.org

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ANIL KALHAN  
**CHAIR OF THE INTERNATIONAL  
HUMAN RIGHTS COMMITTEE**  
PHONE: (215) 804-9098  
anil.kalhan@aya.yale.edu

Hon. Edward R. Royce  
Chair, Committee on Foreign Affairs  
U.S. House of Representatives  
2310 Rayburn House Office Building  
Washington, DC 20515

Hon. Eliot L. Engel  
Ranking Member, Committee on Foreign  
Affairs  
U.S. House of Representatives  
2462 Rayburn House Office Building  
Washington, DC 20515

Hon. Bob Corker  
Chair, Committee on Foreign Relations  
U.S. Senate  
425 Dirksen Senate Office Building  
Washington, DC 20510

Hon. Bob Menendez  
Ranking Member, Committee on Foreign  
Relations  
U.S. Senate  
528 Hart Senate Office Building  
Washington, DC 20510

**Re: Politicization of the Judiciary in Poland**

Dear Representative Royce, Representative Engel, Senator Corker, and Senator Menendez:

We write on behalf of the New York City Bar Association to convey our concerns about the impending final step in the politicization of the Polish judiciary.<sup>1</sup> On July 3, 2018, when a new law passed in December 2017 goes into final effect, more than 40 percent of the Polish Supreme Court will be required by law to seek the President of Poland's permission to continue to serve on the Court. The law provides the President of Poland with the discretionary authority to terminate all Supreme Court judges age 65 and over, even those whose terms are not completed, an act which by itself violates the Polish constitution.

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<sup>1</sup> The Association is an independent nongovernmental organization of over 24,000 lawyers, judges, law professors and government officials from throughout the United States and over 50 other countries. Throughout its 145-year history, the Association has consistently maintained that respect for human rights and the rule of law is essential in all jurisdictions and has a long history of investigating and reporting on human rights concerns around the world, including within the United States, through the work of its International Human Rights Committee, its Task Force on the Independence of Lawyers and Judges, and other Association committees.

Although we continue to appreciate the State Department’s previous statements supporting judicial independence and separation of powers in Poland, we believe it is imperative that the U.S. government clearly denounce the Polish government’s plan to place its country’s judiciary under legislative and executive control through this final legislative stroke. At the time of our previous letter raising these concerns in September 2017, the U.S. government had sufficient time to work with its allies in Warsaw to protect the integrity of the Polish judiciary.<sup>2</sup> However, time is now of the essence, and we urge you to take renewed action to support judicial independence and the rule of law in Poland.

As you are aware, in December 2017 the Polish government passed an amended version of the Law on the Supreme Court, which requires members of the Polish Supreme Court to affirmatively ask the President of Poland for permission to remain on the Court after they reach the age of 65.<sup>3</sup> When this law goes into effect on July 3, 2018, it will force 30 of the Court’s 70 justices to issue such requests to the president’s office. Those justices who do not make a request will be automatically terminated from the Court. Those justices that do make such requests can have their request to remain denied by the President of Poland at his discretion—indeed, no reason for a denial need be given. Moreover, the law also authorizes the Polish government to expand the Supreme Court by 50 seats, to 120 judges. By expanding the Court and simultaneously forcing the resignation of up to 30 judges, the Polish government will provide itself with the ability to pack the Court with judges who are allies of the governing political party. There can be no doubt that this statutory scheme has the singular goal of politicizing the Supreme Court.

The Polish government’s elimination of judicial independence does not stop at the Supreme Court. The July 3 deadline will also bring about the establishment of the “extraordinary appeal” body—a quasi-judicial entity that will have the power to rehear cases that have been adjudicated by common or martial law courts within the past twenty years. The body will be empowered to reconsider matters pertaining to the facts and law of cases taken up for review and will have the authority to issue new and unreviewable decisions. The body will include so-called “lay judges”—individuals appointed by the Polish Senate who need not have any legal training. The existence of a body containing political appointees, and politically-approved judges, that can reverse decisions that have been in place already for decades will severely undermine judicial certainty and the rule of law in Poland.

The politicized manipulation of the Supreme Court’s composition and the establishment of the “extraordinary appeal” body will violate widely accepted international standards on judicial independence. The pending changes will threaten fair trial rights under the International

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<sup>2</sup> See, e.g., Letter from John S. Kiernan, President, New York City Bar Ass’n, to Hon. Edward Royce et al., *Judicial Independence, Separation of Powers, and the Rule of Law in Poland*, Sept. 13, 2017, <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-congressional-leaders-on-judicial-independence-separation-of-powers-and-the-rule-of-law-in-poland> [hereinafter New York City Bar Association Letter, *Judicial Independence, Separation of Powers, and the Rule of Law in Poland*, Sept. 13, 2017] (all links last visited June 27, 2018).

<sup>3</sup> The law that ultimately was enacted in December 2017 is a slightly revised version of what was discussed in our previous letter.

Covenant on Civil and Political Rights, including the right to be heard by an independent and impartial tribunal, the right to equal treatment under the law, and general due process rights that are also enshrined in the Universal Declaration of Human Rights.<sup>4</sup> If these efforts to manipulate the Polish judiciary go into effect on July 3, Poland will be in direct violation of internationally accepted legal norms that it is obligated to respect. Indeed, the European Commission has already identified the pending changes as a threat to the “values” of the Treaty on the European Union and in December 2017, the Commission took the unprecedented step of triggering a disciplinary hearing against Poland under Article 7 of the Treaty.<sup>5</sup> For the first time in the EU’s history, a member state has been identified as a threat to the rule of law in Europe.

We urge you, as congressional leaders, to take steps to ensure that the U.S. government clearly communicates to the Polish President, Prime Minister, and Law and Justice Party leaders its disapproval of the pending politicization of the Polish judiciary. To that end, we ask that you adopt congressional resolutions prior to July 3 calling upon the government of Poland to repeal the laws in question, or, at the very minimum, exempt current members of the Supreme Court from the retirement requirement. If formal resolutions cannot be passed in this short time frame, we encourage you, as congressional leaders, to send a letter to your Polish counterparts directly raising these concerns. We also urge you to highlight and convey disapproval of these developments in statements on the House and Senate floors.

As we have previously noted on several occasions, congressional leadership has always played a crucial role in the formulation and exercise of U.S. foreign policy, including policies that seek to promote respect for the rule of law abroad—indeed, for decades the executive branch has been subject to congressional directives that require the promotion of human rights to be a “principal goal” of U.S. foreign policy.<sup>6</sup> We hope that you will continue to play that role by demonstrating to the Polish government that the United States will not sit idle while the government of a key ally undermines judicial independence and the rule of law.

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<sup>4</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; Universal Declaration on Human Rights, G.A. Res. 217A, art. 15, U.N. GAOR, 3d Sess., 1st Plen. Mtg. U.N. Doc. A/810 (Dec. 12, 1948); *see also* UN Basic Principles on the Independence of the Judiciary, Seventh Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 08/26-09/06/1985, G.A. Res. 40/32 (Nov. 29, 1985) and G.A. Res. 40/146 (Dec. 13, 1985), U.N. 40th Sess., Supp. No. 53, U.N. Doc. A/40/53 (1985), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

<sup>5</sup> *See* European Commission, Press Release, *Rule of Law: European Commission Acts to Defend Judicial Independence in Poland*, Dec. 20, 2017, [http://europa.eu/rapid/press-release\\_IP-17-5367\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5367_en.htm).

<sup>6</sup> *See, e.g.*, New York City Bar Association Letter, *Judicial Independence, Separation of Powers, and the Rule of Law in Poland*, Sept. 13, 2017, *supra* note 1. As Congress mandated by statute in 1974:

The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

22 U.S.C. § 2304(a)(1); *see generally* Letter from John S. Kiernan, President, New York City Bar Ass’n, to Hon. Paul Ryan et al., *Human Rights During the Trump Administration’s First 100 Days*, Apr. 28, 2017, <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-congressional-leaders-on-the-trump-administrations-handling-of-human-rights-and-international-engagement-in-its-first-100-days>.

Respectfully,



Roger Juan Maldonado  
President



Anil Kalhan  
Chair, International Human Rights  
Committee

cc: Hon. Chris Smith  
Co-Chair, Congressional Caucus on Poland  
U.S. House of Representatives  
2373 Rayburn House Office Building  
Washington, DC 20515

Hon. Dan Lipinski  
Co-Chair, Congressional Caucus on Poland  
U.S. House of Representatives  
2346 Rayburn House Office Building  
Washington, DC 20515

Hon. Marcy Kaptur  
Co-Chair, Congressional Caucus on Poland  
U.S. House of Representatives  
2186 Rayburn House Office Building  
Washington, DC 20515

Hon. Tim Murphy  
Co-Chair, Congressional Caucus on Poland  
U.S. House of Representatives  
322 Cannon House Office Building  
Washington, DC 20515

Ms. Sarah Becker  
Poland Desk Officer  
Office of Central European Affairs  
Department of State  
2201 C Street NW  
HST Room 4230  
Washington DC 20520

Mr. Frans Timmermans  
First Vice President  
European Commission  
Rue de la Loi/Wetstraat 200  
1049 Brussels  
Belgium