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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC
REVIEW OF POLAND**

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Composed of 60 eminent jurists and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

Rue des Buis 3, 1202 Geneva 1, Switzerland
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 Website: <http://www.icj.org> E-mail:
info@icj.org

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I. Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Poland.
2. In this submission, the ICJ wishes to draw the attention of the Working Group on the UPR to grave concerns relevant to the rule of law in Poland, in particular with regard to the independence of the judiciary and the separation of powers.

II. The state of the rule of law in Poland: separation of powers and independence of the judiciary

3. An independent judiciary, operating within a system that respects the separation of powers, is an indispensable component of the rule of law and a necessary condition for the effective protection of human rights.ⁱ States must enshrine such independence in law. The Polish Constitution establishes that the system of government is based on the "separation of and balance between the legislative, executive and judicial powers,"ⁱⁱ guaranteeing that the "courts and tribunals shall constitute a separate power and shall be independent of other branches of power," and that "[j]udges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes."ⁱⁱⁱ
4. Following its third UPR cycle in 2017, Poland accepted all recommendations it received related to the administration of justice and the right to a fair trial. These included, *inter alia*, 16 calling for upholding the independence of the judiciary, five referencing the need to guarantee the integrity and effective functioning of the Constitutional Tribunal, five emphasizing the need to respect and implement the opinions of the Venice Commission, European Commission, and other relevant regional institutions, and two urging for the clear separation of functions between Ministry of Justice and the Prosecutor General's Office.^{iv}
5. In its mid-term progress report on implementation of December 2019, Poland stated that the Polish Constitution and lower rank law provisions fully guarantee the independence of the judiciary,^v while also stating that "reforms aimed at improving the functioning of justice have recently been launched in Poland," with the "legislative process still pending as the strive for full reform of the judiciary system" continued.^{vi} The report also stated that Polish judicial reforms are "in line with relevant European standards," that "opinions from international institutions concerning these reforms are taken into account when drawing new legislation,"^{vii} and that Poland's Constitutional Tribunal (CT) is an independent institution.^{viii}
6. Despite these statements, the ICJ is gravely concerned that the separation of powers, the independence of the judiciary, and the capacity of Polish judges to uphold the rule of law have continued to be severely compromised over the last several years.^{ix} The ICJ considers that the government's successive "reforms" of the judiciary—involving a set of policy measures and legislative changes adopted by the Parliament and implemented by

the authorities from 2015 to the present—amount nothing less than deliberate and systematic attempts to dismantle the judiciary’s independence by subjecting it to interference by the executive and legislature. The systematic dismantling of judicial independence has been confirmed by successive judgments of both the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU), most recently by the judgement of the the ECtHR’s Grand Chamber in *Grzeda v Poland* in March 2022.^x

7. Against this background, the European Commission has taken the unprecedented step to trigger the procedure under Article 7 of the Treaty of the European Union, that is activated in cases of clear risk of a serious breach of the rule of law.^{xi} This procedure, currently before the Council of the EU, may result in the suspension of certain rights of Poland as Member of the EU, including voting in the Council and the European Council.

III. Overview of legislative measures and their impacts since the last UPR

8. Since its third UPR cycle, the authorities have passed and successively amended three Acts with the aim of “reforming” the ordinary courts (the Act on the Organization of Ordinary Courts),^{xii} the Supreme Court (the Act on the Supreme Court),^{xiii} and the National Council of the Judiciary (the Act Amending the Act on the National Council of the Judiciary).^{xiv} These legislative changes have served to progressively entrench political control over Poland’s judiciary.
9. The Act on the Supreme Court and its amendments have imposed executive control of the appointment process for judges of the Supreme Court, court presidents and other judges, including by giving extra powers to the Prosecutor General (whose post has been held *ex officio* by the Minister for Justice since 2016^{xv}) over the internal organization of the courts and over the appointment and dismissal of presidents and vice-presidents of the courts.^{xvi}
10. A March 2021 amendment to the Act on the Supreme Court further increased the control of the executive over the Supreme Court, in particular with regard to the presidencies of the chambers and the plenary of the Court. The law, approved on 1 April 2021, lowered the quorum requirements for judges to select candidates to the post of President of a Chamber of the Supreme Court and, when these requirements are not met, allowed the Polish President to appoint an ‘acting’ President of the Chamber. The new amendments furthermore prolonged the period for making so-called “extraordinary appeals” against final judgments (after 17 October 1997) by all Polish courts.^{xvii} The Polish Ombudsperson and the National Bar Council both expressed concern about the Act’s granting of excessive powers to the Court’s First President, whose own appointment has been contested, and about the Act’s overall detrimental impact on the Court’s independence.^{xviii}
11. Legislative changes to procedures for appointing judicial members to the National Council of the Judiciary (NCJ) have transferred the power to elect NCJ members from the judiciary to the lower house of parliament (the Sejm), and removed from office NCJ judicial members who had been elected under the previous system.^{xix} Despite a January 2020 resolution by three joined Chambers of the Supreme Court stating that the NCJ’s new composition cannot be considered independent, the NCJ continues to propose judicial nominees to the Polish President, who are systematically appointed to judicial office.^{xx}

12. Legislation implemented since Poland's last UPR cycle has also altered the disciplinary liability of judges significantly, including by creating two new Supreme Court chambers, namely the Disciplinary Chamber and the Chamber of Extraordinary Review and Public Affairs, whose members are appointed by the Polish President following recommendations by the new, politicized NCJ.^{xxi} These Chambers cannot be considered as independent, given that the body recommending appointments to it —the NCJ—lacks guarantees of independence from the executive and legislative powers as required by standards of the Council of Europe and the United Nations, including that at least half of its members be judges elected by their peers.^{xxii} The ECtHR, in *Reczkowicz and Others v. Poland*, held that irregularities in the appointment process compromised the legitimacy of the Disciplinary Chamber to such an extent that it could not be considered to be a lawful tribunal for the purposes of the right to a fair hearing in Article 6 ECHR.^{xxiii} In July 2021 the CJEU imposed interim measures on Poland related to the Disciplinary Chamber, requesting the suspension of provisions whereby it may decide on requests for lifting judicial immunity, as well on matters of employment, social security, and retirement of Supreme Court Judges.^{xxiv}
13. A December 2019 law amending the Law on the System of the Common Courts and the Act on the Supreme Court and Certain Other Acts further interferes with judges' independence. These amendments include provisions prohibiting judges from applying CJEU's rulings allegedly contrary to the Polish Constitution. This has had the effect of impeding judges from implementing a November 2019 CJEU judgment on the independence of the Supreme Court's Disciplinary Chamber.^{xxv} Further measures in this legislation introduced new, vaguely formulated disciplinary offences for judges that unduly limit their rights to freedom of expression, assembly, association speech and privacy; obliged judges to disclose membership in associations and functions they perform in foundations; and transferred all decision-making about courts to their presidents (who are nominated the Minister of Justice).^{xxvi}
14. The ICJ emphasizes that these measures and their implementation directly contravene international standards on the independence of the judiciary, including on the institutional and personal independence and the security of tenure of judges,^{xxvii} and recalls that respect for the right to a fair hearing under Article 14 ICCPR, as well as international standards on judicial independence, require all branches of government to respect the independence of the judiciary.^{xxviii}

IV. Arbitrary dismissals and illegitimate appointments of judges

15. The ICJ is also deeply concerned over the forced retirement of Polish judges under the Law on the Ordinary Courts of 12 July 2017, which lowered the age of retirement of judges in all Polish courts, set different retirement ages for men and women on a gender-discriminatory basis, and gave the Minister of Justice the power to arbitrarily extend the time of service of judges. The organization is also concerned at the law on the Supreme Court of 12 July 2017 that lowered the age of retirement of Supreme Court judges and allowed the president to order judges over the age of retirement to step down,^{xxix} and which was found to be in contravention to the State's obligations under Article 47 of the Charter of Fundamental Rights of the European Union and Article 19(1) of the Treaty of the European Union by the CJEU.^{xxx}

16. The ICJ considers that the forced retirement of 27 (one third of) Supreme Court judges in July 2018, as well as the dismissal of over 70 court presidents by the Minister of Justice between August 2017 and February 2018,^{xxxvi} amounted to arbitrary dismissals, and constituted a flagrant breach of a basic tenet of judicial independence, namely the security of tenure of judges,^{xxxvii} and indicated a deliberate attempt by the government to control the judiciary. The ICJ condemns the subsequent illegitimate appointment of 27 new judges to these posts, while the case on the forced retirement of the dismissed appointees was pending before the CJEU (see *supra*, para 15). The CJEU ruled on it on 24 June 2019 that the State's law on the Supreme Court and amending law breached the Charter of Fundamental Rights of the EU and other EU treaties.^{xxxviii}
17. Amendments passed to the laws on the judiciary in February 2020 prohibit judges from questioning the legitimacy or institutional independence of any Polish courts.^{xxxix} Attacks on the judiciary in Poland continue under the guise of disciplinary proceedings, particularly against judges who have had recourse to EU institutions to defend the rule of law.^{xl} Since the last UPR cycle, the ECtHR has heard numerous cases involving premature termination or harassment of Polish judges, including, for instance, those of Jan Grzęda,^{xli} Mariusz Broda and Alina Bojara^{xlii} and Waldemar Żurek.^{xliii} In accordance with international standards on judicial independence, such disciplinary proceedings are abusive insofar as they are directed against judges carrying out their judicial functions in accordance with the principles of judicial independence,^{xliiii} or for exercising their freedom of expression, association, or assembly as a means to defend the rule of law.^{xliii}

V. Failure to comply with European Court of Human Rights judgments and infringement procedures against Poland for violations of EU law

18. The ICJ is gravely concerned by the Polish Constitutional Court's unprecedented challenge to the ECtHR's ruling in the case of *Reczkowicz v. Poland* in November 2021. In its decision on 24 November 2021 the Constitutional Court found that Article 6, paragraph 1, of the Convention, safeguarding the right to a fair trial by an independent and impartial tribunal established by law, is not compatible with the Polish Constitution in certain circumstances (being "incompatible ... in as far as it gave the [ECtHR] the right to assess the legality of the appointment of the Tribunal's judges.")^{xliii} A subsequent ruling by the Constitutional Court on 10 March 2022, reiterated the November 2021 judgment.^{xliii} Such decisions are particularly troubling in the context of the ECtHR's more recent findings in *Advance Pharma Sp Z.O.O v Poland* of "systemic dysfunction" in judicial appointments in Poland,^{xliii} as reflective of the trend of non-implementation of decisions by international and regional human rights bodies and instruments.^{xliii}
19. On 21 December 2021 (following its previous launch of infringement procedures against Poland on 3 April 2019 and 29 April 2020), the European Commission launched a further infringement procedure against Poland as a result of serious concerns with respect to the Constitutional Court and its recent case law, raising in particular serious doubts about the Court's independence and impartiality and considering that "it no longer meets the requirements of a tribunal previously established by law, as required by Article 19(1)" of the TEU.^{xliii}

VI. Recommendations

20. The ICJ calls upon the WG and the HRC to recommend to the authorities of Poland the following:

- 21. Abrogate the reforms of the judiciary introduced in the last decade and, in particular, guarantee that the judicial system be free from control of the executive and legislative branches of the State. Any judicial reform should be:**
- carried out in accordance with international law obligations, in particular, Article 14 ICCPR and international standards on the independence of the judiciary, the separation of powers and the rule of law ;
 - the result of transparent, open, and fair processes that involve all relevant domestic stakeholders, including the judiciary, representatives of the legal profession, the Office of the Ombudsperson and civil society actors;
 - in compliance with the judgments and recommendations of relevant regional and international bodies, including, *inter alia*, the Human Rights Committee, Venice Commission, the European Court of Human Rights and the Court of Justice of the European Union.
- 22. Ensure that procedures for nominations and promotions of judges be in full compliance with relevant international and regional standards, including by amending procedures for the election of members to the NCJ, so as to ensure that at least half of its members be judges elected by their peers.**
- 23. Overhaul the reforms introduced to disciplinary procedures for judges, including at the Supreme Court level, with a view to ensuring freedom from undue political (executive and legislative) influence in this respect.**
- 24. Ensure that judges and legal professionals be able to express their views, including on issues related to judicial independence, protection of human rights, the separation of powers and the rule of law, consistent with their rights to freedom of expression, association and assembly, and their right to respect for private life.**
- 25. Take all necessary legal measures to fully comply with judgments of the European Court of Human Rights, the Court of Justice of the European Union and other international courts and international human rights mechanisms.**

ⁱ UN Basic Principles on the Independence of the Judiciary, adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 1985, and endorsed by General Assembly Res 40/32 of 29 November 1985 and 40/146 of 13 December 1985; UN Human Rights Council, Resolution 35/12 on independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc. A/HRC/35/12, 10 July 2017; UN General Assembly, Resolution 67/1, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, UN Doc. A/RES/67/1, 30 November 2012, para. 13; ICJ, Declaration of Delhi, 10 January 1959; *Stafford v. UK*, ECtHR, Application no. 46295/99, Judgment of 28 May 2002, para. 78, which states that: "the notion of separation of powers between the executive and the judiciary has assumed growing importance in the caselaw of the Court"; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), UN Docs. E/CNA/Sub2/1988/20/AddI and AddIICorrI, Articles 4 and 74; Bangalore Principles, Value 1.

ⁱⁱ The Constitution of the Republic of Poland of 2nd April, 1997, as published in Dziennik Ustaw No. 78, item 483, art. 10, available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

ⁱⁱⁱ *Id.*, arts. 173, 178.

^{iv} Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Poland', Third Cycle Review, A/HRC/36/14, 18 July 2017, Recommendations 120.84–120.101 concerning the administration of justice and fair trial (theme D51), para 120, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/14.

^v Republic of Poland, Ministry of Foreign Affairs, Human Rights Council Third Cycle, Universal Periodic Review Mid-Term Progress Report by Poland, December 2019, p. 9, available at: <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session27/PL/ImplementationPoland.docx>.

^{vi} *Id.*, p. 12.

^{vii} *Id.*, p. 14.

^{viii} *Id.*, p. 13.

^{ix} See also Statement by 44 ICJ Commissioners and Honorary Members Condemning the Rapidly Escalating Rule of Law Crisis in Poland, 5 February 2020, available at: <https://www.icj.org/poland-judges-and-lawyers-from-around-the-world-condemn-rapidly-escalating-rule-of-law-crisis/>.

^x European Court of Human Rights, *Grzęda v. Poland* GCh, application no. 45678/98, 15 March 2022,.

Available at: <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-216400&filename=CASE%20OF%20GRZ%C4%98DA%20v.%20POLAND.pdf>.

^{xi} Article 7 TUE. See European Commission PR at [Rule of Law: European Commission acts to defend judicial independence in Poland \(europa.eu\)](https://ec.europa.eu/justice/rule-of-law/european-commission-acts-to-defend-judicial-independence-in-poland)

^{xii} The 12 July 2017 Law on amendments to the Act on the Organisation of Ordinary Courts and certain other statutes (*Ustawa o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw*).

^{xiii} The 20 July 2017 Act on the Supreme Court (*Ustawa o Sądzie Najwyższym*).

^{xiv} The 12 July 2017 Act Amending the Act on the National Judicial Council and certain other statutes (*Ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*);

^{xv} The reform of the Public Prosecutor's Office, notably the *ad personam* merger of the posts of Minister of Justice and Prosecutor General, and the extensive discretionary powers of the Minister of Justice over prosecutorial service and the actual prosecution of individual cases, in themselves raise serious questions about the Prosecution Services' independence and impartiality. See Concil of Europe Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), The Functioning of Democratic Institutions in Poland, Report, Doc. 15025, 6 January 2020, available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28330&lang=en>.

^{xvi} *Id.*, as summarized in paras. 17–23.

^{xvii} Law amending the Law on the Supreme Court, 1 April 2021. See also, European Commission, 2021 Rule of Law Report: The Rule of Law Situation in the European Union, Country Chapter on the rule of law situation in Poland, 20 July 2021, p. 8, available at: <https://op.europa.eu/s/vXil>.

^{xviii} Opinion of the Ombudsperson No. IV.510.20.2021 of March 2021 and Opinion of the National Bar Council No. NRA.12-SM.1.15.2021. See also, European Commission, 2021 Rule of Law Report, *op. cit.*, p. 8.

^{xix} *Grzęda v. Poland*, as summarized in paras. 17–23.

^{xx} European Commission, 2021 Rule of Law Report, *op. cit.* p. 8.

^{xxi} *Grzęda v. Poland*, as summarized in paras. 17–23.

^{xxii} UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. See also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), available at: <https://digitallibrary.un.org/record/606075?ln=en>. See, UN Basic Principles on the Independence of the Judiciary, Principles 11, 13, 14, 17–20; Judicial Integrity Group, Measures for the Effective Implementation of the Bangalore Principles, 21–22 January 2010, paragraphs 3.1– 3.3, 4.1, 10.1(h), 12.1–12.7, 13.5, 14.1–14.2, 15.1–15.8, 17.1–17.4; UN Human Rights Council, Resolution 35/12, para. 3.9; CCJE, *Magna Carta of Judges*, CCJE(2010)3 Final, 17 November 2010, para. 13; CMCE, *Judges: independence, efficiency and responsibilities*, Recommendation CM/REC(2010)12, 17 November 2010, para. 26; CCJE, Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, 23 November 2007, para. 44.

^{xxiii} European Court of Human Rights, *Reczkowicz v. Poland* (Application no. 43447/19), 22 July 2021, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211127%22%7D%7D>.

^{xxiv} European Commission, Independence of Polish Judges: Commission asks European Court of Justice for financial penalties against Poland on the activity of the Disciplinary Chamber, Press Release, 7 September 2021, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4587.

^{xxv} Court of Justice of the European Union, *A. K. and Others* (Independence of the Disciplinary Chamber of the Supreme Court) (C 585/18, C 624/18 and C 625/18), available at: <https://curia.europa.eu/juris/documents.jsf?num=C-585/18>.

^{xxvi} Act of 20 December 2019 amending the Act—Law on the Structure of Common Courts, the Act on the Supreme Court and some other acts, Journal of Laws of 2020, item 190, available at: [http://orka.sejm.gov.pl/opinie9.nsf/nazwa/69_u/\\$file/69_u.pdf](http://orka.sejm.gov.pl/opinie9.nsf/nazwa/69_u/$file/69_u.pdf). For an assessment of the legislation see JUSTITIA, Opinion of the Polish Judges' Association 'Iustitia' on the Act of 20 December 2019 amending the Act- the Law on the System of Common Courts, the Act on the Supreme Court and Certain Other Acts, 10 February 2020, available at: <https://www.iustitia.pl/en/new-krs/3688-opinion-of-the-polish-judges-association-iustitia-on-the-act-of-20-december-2019-amending-the-act-the-law-on-the-system-of-common-courts-the-act-on-the-supreme-court-and-certain-other-acts>

xxvii UN Basic Principles on the Independence of the Judiciary, Principle 12; CMCE, Judges: independence, efficiency and responsibilities, Recommendation CM/REC(2010)12, 17 November 2010, Chapter VI, para. 49; Universal Charter of the Judge, Article 8; International Bar Association's Minimum Standards of Judicial Independence, Article 1(b) and Article 22; Paris Minimum Standards of Human Rights Norms in a State of Emergency, principle B.3(c); Burgh House Principles on the Independence of the International Judiciary, principle 3.1; Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, Principles A(4)(n)(2) and A(4)(p); Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government, Principle IV; Latimer House Guidelines for the Commonwealth, Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 19 June 1998, Section II, para. 1; Magna Carta of Judges, Principles 4 and 19; European Charter on the Statute for Judges, Principle 3.4. See also, Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers, Annual Report to the Human Rights Council, UN Doc. A/HRC/11/41, 24 March 2009, para. 57; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 38. See also, e.g., Human Rights Committee, Busyo, Wongodi, Matubaka et al v. Democratic Republic of the Congo, UN Doc CCPR/C/7878/D/933/2000 (2003).

xxviii UN Basic Principles on the Independence of the Judiciary, adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 1985, and endorsed by General Assembly Res 40/32 of 29 November 1985 and 40/146 of 13 December 1985; UN Human Rights Council, Resolution 35/12 on independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc. A/HRC/35/12, 10 July 2017;

xxix 12 July 2017 Law on amendments to the Act on the Organisation of Ordinary Courts and certain other statutes (*Ustawa o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw*); and 20 July 2017 Act on the Supreme Court (*Ustawa o Sądzie Najwyższym*). See, summary by Pech, Laurent, Wachowiec, Patryk and Mazur, Dariusz (2021) *Poland's rule of law breakdown: a five-year assessment of EU's (in)action*. *Hague Journal on the Rule of Law*, 13(1), available at: <https://link.springer.com/article/10.1007/s40803-021-00151-9>.

xxx Court of Justice of the European Union, Commission v Poland (Independence of the Supreme Court) C-619/18, available at:

<https://curia.europa.eu/juris/liste.jsf?num=C-619/18>.

xxxi European Commission, 2020 Rule of Law Report: The Rule of Law Situation in the European Union, Country Chapter on the rule of law situation in Poland, 30 September 2020, p. 8, available at: https://ec.europa.eu/info/sites/default/files/pl_rol_country_chapter.pdf.

xxxii Resolution adopted by the Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/23/6, 19 June 2013, OP3, available at: <https://www.icy.org/wp-content/uploads/2014/03/UN-Human-Rights-Council-independence-of-the-judiciary-resolution-A-HRC-RES-23-6-2013-eng.pdf>.

xxxiii Court of Justice of the European Union, Commission v Poland (Independence of the Supreme Court) C-619/18, available at: <https://curia.europa.eu/juris/liste.jsf?num=C-619/18>.

xxxiv Act of 20 December 2019 amending the Act—Law on the Structure of Common Courts, the Act on the Supreme Court and some other acts, Journal of Laws of 2020, item 190, available at: [http://orka.sejm.gov.pl/opinie9.nsf/nazwa/69_u/\\$file/69_u.pdf](http://orka.sejm.gov.pl/opinie9.nsf/nazwa/69_u/$file/69_u.pdf).

xxxv See, European Commission, 2021 Rule of Law Report, *op. cit.* p. 9-10.

xxxvi European Court of Human Rights, Grzęda v. Poland GCh, application no. 45678/98, 15 March 2022.

xxxvii Broda and Bojara v. Poland, Application nos. 26691/18 et 27367/18, Statement of facts, 2 September 2019, available at: <https://hudoc.echr.coe.int/eng?i=001-196215>.

xxxviii Żurek v. Poland, Application no. 39650/18, Statement of facts, 20 May 2020, available at: <https://hudoc.echr.coe.int/eng?i=001-202650>.

xxxix Universal Charter of the Judge (International Association of Judges 2017), Article 7, available at: https://www.unodc.org/res/ji/import/international_standards/the_universal_charter_of_the_judge/universal_charter_2017_english.pdf; UN Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/75/172, 17 July 2020, Report on disciplinary proceedings against judges for alleged misconduct in the exercise of their functions, paras. 23-32, and para. 90, available at: https://cdp-hrc.uottawa.ca/sites/cdp-hrc.uottawa.ca/files/2020-07-17_report_unsr_independencejudgeslawyers_a-75-172_en.pdf.

xl Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 and 40/146, 1985), art. 8, available at: <https://www.icy.org/wp-content/uploads/2014/03/UN-Basic-principles-independence-judiciary-1985-eng.pdf>; The Bangalore Principles of Judicial Conduct (Judicial Group on Strengthening Judicial Integrity, 2002), art. 4.6, available at: <https://www.icy.org/wp-content/uploads/2014/03/Bangalore-Principles-of-Judicial-Conduct-Instrument-2002-eng.pdf>; Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") (referenced by UN Commission on Human Rights, resolution 1989/32), art. 8, available at: <https://www.icy.org/wp-content/uploads/2014/03/SR-Independence-of-Judges-and-Lawyers-Draft-universal-declaration-independence-justice-Singhvi-Declaration-instruments-1989-eng.pdf>; Special Rapporteur on the Independence of Judges and Lawyers, Report on the freedom of expression, association and peaceful assembly for judges and prosecutors, A/HRC/41/48, 29 April 2019, available at: <https://www.ohchr.org/en/calls-for-input/reports/2019/report-rights-freedom-expression-association-and-peaceful-assembly>.

xli Constitutional Tribunal, Judgement K6/21, 24 November 2021, available at: <https://trybunal.gov.pl/en/hearings/judgments/art/11709-art-6-ust-1-zd-1-konwencji-o-ochronie-praw-czlowieka-i-podstawowych-wolnosci-w-zakresie-w-jakim-pojeciem-sad-obejmuje-trybunal-konstytucyjny>.

See also Impunity Watch, Gabriella Kielbasinski, The Polish Power Struggle: Poland's "Unprecedented" Pushback on EU Primacy and Rule of Law, 1 February 2022, available at: <https://impunitywatch.com/the-polish-power-struggle-polands-unprecedented-pushback-on-eu-primacy-and-rule-of-law/>.

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