

Today Tuleya, Tomorrow the EU

Igor Tuleya is (Y)Our Judge: Help us Build a Wall Behind Him

Igor Tuleya is someone you should know. He is your judge, wherever you live in the EU. More specifically, he is a judge at the District Court in Warsaw. Next Monday, on October 5th 2020, he may lose his judicial immunity as a result of a hearing before the “Disciplinary Chamber” of the Polish Supreme Court. If this happens, he will likely face subsequent criminal charges, and, as a consequence, a very real risk of imprisonment. If this happens, it will affect every independent and impartial judge in Poland. If this happens, it will affect every EU citizen too.

How he/we got here and how it affects every EU citizen

The case originates in 2016, when judge Tuleya issued a judgment ordering the Prosecutor’s office to investigate the alleged violations of law by Poland’s ruling party, Law and Justice, during the parliamentary voting on the budget. Judge Tuleya announced his judgment in front of the cameras, as he was fully entitled to in implementing the rule of openness of court proceedings. Yet, the Prosecutor charged him for allowing journalists into the courtroom. This now forms the basis for the “Disciplinary Chamber” proceedings against the judge. In the first instance proceeding, in June 2020, the “Disciplinary Chamber” denied the request of the National Public Prosecutor’s Office and judge Tuleya was not deprived of his immunity. However, the Prosecutor appealed. The case will be re-examined by the Chamber this coming Monday, 5 October 2020.

That this should be problematic for every EU citizen on its own is explained by this simple fact: the “Disciplinary Chamber” is an entity which the Court of Justice of the EU has found is not an independent and impartial court, and therefore its members not judges. In contrast, Igor Tuleya is a judge. In his conduct as a Polish and European judge, including by referring questions for a preliminary ruling that led the Court of Justice to its very pronouncement on the status of the “Disciplinary Chamber”, he has been the embodiment of courage, honesty, integrity and dignity of the judicial profession. For Igor Tuleya these qualities have come at a considerable cost. These are the precise reasons why the present Polish government, along with the Minister of Justice, is so determined to act against him. Since the current Polish government came to power, it has gone after judges doing their job and fulfilling their duty as a

prescribed by Polish constitutional law and Union law. Various public letters, which one of us has co-signed (see [here](#) for the latest), have repeatedly sounded the alarm bells about this and call for action.

Indeed, what can only be called harassment against our Judge Tuleya has been ongoing for several years. That the June 2020 attempt to remove his immunity was unsuccessful was likely due to a very strong reaction in Poland and around the world. The slogan “Wall behind Igor” was used by judicial bodies such as the Polish Judges Association “IUSTITIA”, civil society (including the Free Courts initiative), and the Polish Ombudsman Adam Bodnar. Concern was also voiced by Diego García-Sayán, the UN Special Rapporteur on the Independence of Judges and Lawyers and, promisingly, by Commissioner Věra Jourová and other EU officials – although in general terms.

That the plight of Igor Tuleya should be problematic for every EU citizen is explained by another simple, but broader fact too: Poland is a Member State of a legal and political space we share, our European Union, which is based on common legal values and continuous cooperation across our borders. Independence of each and every of our EU judges is one of the bare minimum requirements for this. That is why we, a Polish and Dutch lawyer, both feel equally concerned, despite our different locations, experiences and perspectives. That is why, together, we are calling on you to help us build a wall behind Judge Igor Tuleya.

Why bother, as lawyers, as Europeans?

Your initial instinct may be: I can understand a concern for substantive issues, but why bother about the plight of judges specifically? Isn't judicial independence just some abstract notion – what is happening to Igor Tuleya just an isolated one-off? Absolutely not. Here is why, in the words of American president Andrew Jackson:

All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.

These words express in a simple and accurate way the universal essence of judicial independence. They are crucial for every EU citizen too. For both of us, they also constitute the very reason to stand up and get involved in the struggle for independent Polish courts and judges. Our motivations differ, but are complementary.

One of us, when Poland joined the EU, was just completing her studies there. Polish EU membership was a great privilege of belonging to the community that the EU has always symbolised. It was also a “security guarantee” for Poland and other Central and Eastern Europe states in the sense of respecting the rule of law. Although the belief in effective protection resulting from membership has somewhat weakened over time, there is still a strong hope that the EU will not allow the current Polish authorities to move Polish citizens beyond the European legal area. This is underlined by the great number of Poles involved in the fight for the preservation of the rule of law, as well as the support, help and incredible commitment of people outside of Poland, such as

(among many others) Laurent Pech, Daniel Kelemen or the editors of Verfassungsblog. They are a priceless testimony of European unity. They make us still, despite all of the depressing developments of the last five years, feel that we, as Poles, do belong to a community based on respect for democracy, constitutional order and European law.

For the other, Poland has always been personal too. Without Polish involvement in liberating his country in 1944-45, he might have never known his grandfather. It was the grandfathers of Polish EU citizens who helped ensure that his own escaped dying of hunger in hiding – a necessity after refusing to return to forced labour producing V2 rockets in the German town of Peenemünde. Every EU citizen should realise that Polish courage and commitment to freedom was at the cradle of what made the EU possible. Countless Polish workers, professors and students add value to the EU and the European society and experience every day, independently of the political flavour of the day at home. The EU was always a system for hedging bets. A never again is just that bit more likely if you put your democratic and liberal eggs in more than just national baskets. In that sense, even if we had never seriously contemplated it, the system we designed as the EU was precisely intended to absorb and correct the type of national shocks we now witness. Even if we feel hesitation to induce a dear old friend to return to its own foundations, we must. There is not going to be a functional EU without independent judges in our multi-level liberal democracy. That is why everyone in Poland helping to prevent its current government from acting against Poland's own history and nature deserves help. That is why each independent judge in Poland deserves active support.

It is a must!

For years now, academics, lawyers, civil society activists and politicians have repeatedly appealed for decisive EU backed action to prevent the dismantling of the rule of law in Poland. 5 October 2020, perhaps more than previous moments, is decisive, particularly for those politicians who are responsible for protecting democracy and the rule of law at EU law, Commissioners Věra Jourová and Didier Reynders. Therefore we call on them to:

- Make clear, publicly, that the disciplinary proceedings against Judge Tuleya on 5 October violate EU law because of the European Court of Justice judgments;
- Make clear, publicly, that going ahead with these disciplinary proceedings regardless will have real consequences for the Polish government;
- Support personally Judge Igor Tuleya, by committing to visibly use Commission resources to help build a wall behind him

We have applauded the Commissioners for their leadership under difficult circumstances before. We do not think it is too much to ask them to show it again. In

front of the same Court of Justice, when accepting their responsibility in their service to EU citizens, both solemnly promised to respect and protect the Charter of Fundamental Rights and the treaties, with basic EU values laid down in them. In any European culture words continue to be as good as actions based on them.

“It is a must”, said former Commission President Jean-Claude Juncker on the defense of the rule of law and judicial independence in his 2017 State of the Union:

The rule of law means that law and justice are upheld by an independent judiciary. Accepting and respecting a final judgment is what it means to be part of a Union based on the rule of law. Our Member States gave final jurisdiction to the European Court of Justice. The judgments of the Court have to be respected by all. To undermine them, or to undermine the independence of national courts, is to strip citizens of their fundamental rights. The rule of law is not optional in the European Union. It is a must.

We treat Jean-Claude Juncker’s words pronounced some three years ago as perhaps the most important, urgent European commitment of today. It is a commitment to Judge Igor Tuleya, and to all other judges harassed in Poland: to Judge Beata Morawiec and Judge Irena Majcher, whose hearings before the “Disciplinary Chamber” of the Supreme Court will be held in October too. And to Judges Żurek, Juszczyszyn, Frąckowiak, and Markiewicz. It is also a very practical European commitment to defend the front-line defenders of the principles and values that make us all Europeans.

The new date of the “Disciplinary Chamber” hearing in Judge Tuleya’s case is now October 18th.

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