



**HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA
HELSINKI FOUNDATION for HUMAN RIGHTS**

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Warsaw, 25 January 2008.

**Mr Terry Davis
Secretary General
Council of Europe**

Dear Mr Secretary General,

The Helsinki Foundation for Human Rights (hereafter: HFHR) in Poland would like to express its concern with the refusal of the President of Poland to appoint 9 persons for the position of judges in Polish courts.

In particular, in a letter from 8 August 2007 addressed to the National Judiciary Council, the President of Poland announced, without stating any reasons, that he had not exercised his prerogative to appoint:

- 5 candidates for the position of judges of district courts,
- 4 judges of district courts to become judges of regional courts.

Please note that all the persons concerned followed the process of judicial appointments established by the relevant law. In this respect, candidates fulfilled all the pre-conditions required for the respective positions, including obtaining of a positive opinion by the National Judiciary Council, which is responsible for submitting motions to the President for the appointment of judges.

The refusal of the President to appoint these 9 persons as judges raises concern of the HFHR due to the following reasons.

In our opinion, this is the first time when the President of Poland has used his competence to block the process of appointments without any explanation. It has been only one precedent before, when the President of Poland decided not to appoint a candidate for the position of judge. However, in this case, the President of Poland only returned respective files of the candidate and asked for clarifications. Therefore, his use of the competence without proper explanation may be regarded as a breach of an established constitutional tradition in Poland.

In this case, the refusal to appoint judges may be considered as a potential signal to the Polish judges and candidates to become judges that their professional career may depend upon political process and executive power. Consequently, the present situation with judicial appointments in Poland poses a real threat to the fundamental principle of division of power. The fair and transparent process of judicial appointments is a crucial element to the independence of judiciary in

a state governed by the rule of law and, therefore, it should not be dependent upon political or other influences.

The refusal to appoint judges has been made without any justification. Neither the public opinion nor the candidates have knowledge about grounds for refusal to appoint certain persons for judicial positions. This is especially alarming from the point of view of breach of individual rights. Lack of any reasons is a breach of the principle of public trust of citizens as regards to public power and can be considered discriminatory.

Finally, the HFHR is also deeply concerned with the fact that some of the motions for the appointment of the 9 persons as judges were submitted to the President nearly two years ago. The President, however, announced his decision only in August 2007. This "waiting period" can potentially create a risk of „chilling effect" on the whole judiciary due to the fact that candidates for judicial appointments are not certain as regards to their professional future.

The current situation is very alarming considering the fact that the HFHR is also contacted by other persons - candidates for the position of judges whose motions for appointment have been submitted to the President, but until now the President has not taken any decision in relation to these persons. The longest period of waiting among these persons is from April 2006.

High standards of the judicial independence in the contracting parties are one of the principles of functioning of Council of Europe legal mechanism. Guarantees of independence of judges – also in terms of their appointments were several times underlined by the Council of Europe (for example, Recommendation (1994)12 on independence, efficiency and role of judges; Resolution (2002)12 establishing the European Commission for the Efficiency of Justice). Therefore, it is our belief that the problem of judicial appointments in Poland cannot be considered as a purely domestic matter and should be also of concern for the Council of Europe.

Please accept, Mr Secretary General, the assurances of our highest consideration.

Sincerely,

Marek Antoni Nowicki
President of the Board



The HFHR would like to inform you that a similar letter has been sent to the President of the European Commission, Mr Jose Manuel Barroso.