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His Excellency Andrzej Duda
President of the Republic of Poland
Pałac Prezydencki, Warsaw
Poland

23 October 2020

**Private letter to His Excellency, Andrzej Duda, President of the Republic Poland from
the International Bar Association's Human Rights Institute**

Your Excellency,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern over the case concerning Ombudsman (Commissioner for Human Rights) Dr Adam Bodnar currently before the Constitutional Court.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

We understand that Dr Bodnar's tenure as the Ombudsman expired on 9 September 2020 and the new Ombudsman is appointed through the Parliament and the Senate, however, the Parliament and Senate have failed to appoint a new Ombudsman to date. The IBAHRI also understands that according to well-established practice and Article 3.6 of the Act on the Ombudsman's Office, Dr Bodnar stays in the office as an acting Ombudsman until the appointment of a new Ombudsman. However, it has been reported that the government, acting through Law and Justice MPs, has decided to question the constitutionality of Article 3.6 of the Ombudsman Act, which allows for the Ombudsman to remain in office until his successor has been chosen.

The IBAHRI is deeply concerned by the government's attempt to circumvent the normal election procedure of the Ombudsman. An institution such as the Ombudsman Office that protects freedom and rights of people should be elected through democratic means. The IBAHRI is gravely alarmed by the MPs demands that the Constitutional Court should remove the legal basis, which allows Dr Bodnar to stay in the office as an acting Ombudsman until the appointment of a new Ombudsman, as this would leave the office without a head.

In this regard, we remind Your Excellency of the statutory guarantees of the Ombudsman's independence, as enacted in Polish law under the Act of 15 July 1987 on the Commissioner for Human Rights. The Ombudsman's independence is also established under Principles on the

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protection and promotion of the Ombudsman institution (the Venice Principles). Principle 14 of the Venice Principles states that “*The Ombudsman shall not be given nor follow any instruction from any authorities*”. Also Principle 24 states that “*States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.*”

Additionally, Principle 6 states that “*The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution. The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.*”

The IBAHRI also calls on Your Excellency to take a firm stance indicating the importance of the Ombudsman Office and its independent and competent lead, as well as democratic and transparent process of election of Ombudsman, in which there is the participation of the appropriate legislative bodies.

We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours sincerely,

The Hon Michael Kirby AC CMG
IBAHRI Co-Chair

Anne Ramberg
IBAHRI Co-Chair

Cc

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