***Input of Poland to the report on the undue influence of economic actors on judicial systems.***

***Question 1***

***Do you consider there is a risk that corporations, economic interest groups or wealthy individuals will undermine the independence of judges, or the extent to which the justice system can function in the public interest? What forms does this risk take?***

The risk of influence over judges and thus their decisions is always there; however, the law provides for a number of solutions to prevent this.

First of all, it should be mentioned that Article 178 of the Polish Constitution states that judges, within the exercise of their office, are independent and subject only to the Constitution and statute. Furthermore, judges may not be members of any political party or trade union, or conduct public activities incompatible with judicial independence. What protects judges from being adversely affected is also the constitutional guarantee of conditions in which they exercise their activities and of remuneration compatible with the dignity of their office and scope of duties.

Judicial independence is based on all the guarantees afforded to courts as state (judiciary) authorities plus the guarantees afforded to judges as their representatives and actors who administer justice directly. In this sense, it is the sum of guarantees relating to independent courts as well as to independent and impartial judges. These guarantees are of various natures. Some form part of the general guarantees of a stable legal system (indirect guarantees); others are direct guarantees, addressed to courts and judges. Direct guarantees which underlie the principle of judicial independence (independent courts with independent and impartial judges) may be divided into three basic categories: (1) systemic guarantees; (2) procedural guarantees; (3) social guarantees.

Whoever breaches the prohibitions referred to in Article 178(2) of the Polish Constitution may be held liable under the disciplinary procedure, or under the criminal procedure in the most extreme cases.

In response to this question, it is also worth mentioning judicial immunity (Article 181 of the Polish Constitution and Article 80 of the Law on the System of Common Courts (“the Law”)), as well as the prohibition on holding another post or engaging in another gainful occupation (Article 86 of the Law).

In turn, under Article 48 of the Code of Civil Procedure, a judge shall be recused under the law:

(1) in cases to which they are a party or in which they have such a legal relationship with one of the parties that the outcome of the proceedings would affect the judge’s rights or obligations;

(2) in cases concerning their spouses, relatives by blood and marriage in direct line, collateral relatives by blood within the fourth degree of relationship, and collateral relatives by marriage within the second degree of relationship;

(3) in cases concerning persons related to the judge through adoption, custody, or guardianship;

(4) in cases in which they were or still are a representative or attorney-at-law of one of the parties;

(5) in cases in which they participated, in a lower instance, in the delivery of a contested decision, as well as in cases concerning the validity of an act examined by them or drafted with their participation, as well as in cases where they acted as the public prosecutor;

(6) in cases concerning compensation for damage caused by the delivery of a final and non-appealable but unlawful decision, if they participated in the delivery of such a decision.

Regardless of the reasons specified in the above-mentioned provision, a judge shall be recused by the court at the request of the judge or a party to the proceedings if any circumstance could give rise to a legitimate doubt as to the impartiality of a judge in a particular case.

***Question 3***

***Is there research or evidence demonstrating that corporations, economic interest groups or wealthy individuals play an inappropriate role in judicial selection and promotion?***

The fundamental thing that shapes the status of a judge is the principle of judicial independence. Independence means that decisions taken by a judge are not influenced by any external factors. One such factor can be interest on the part of an actor external to the court (including an economic actor) in having the court deliver a certain decision. Consequently, guaranteeing that a judge is independent and impartial requires eliminating spheres of influence between external actors (including economic actors) and judges, however potential they may be. Existing legislation stipulates instruments aimed at guaranteeing compliance with the principle of judicial independence thus understood.

***Question 5***

***Do judges frequently engage with corporations, economic interest groups or wealthy individuals in ways which risk undermining judicial independence, for example, at private donor retreats or members’ clubs or with wealthy private actors?***

Existing legislation stipulates instruments aimed at guaranteeing compliance with the principle of judicial independence.

It includes, in particular, the requirement of ensuring that a judge enjoys adequate remuneration. The Polish lawmakers have taken the approach that a judge’s remuneration should be set at a level that protects them from being tempted by corruption. In the implementation of the foregoing, it was determined that a judge’s remuneration should be substantially higher than the average Polish salary. At the same time, an indexation mechanism has been introduced. A rise in the average Polish salary automatically causes a judge’s remuneration to increase relevantly (but to ensure that the adequate status of judges is preserved, any potential falls in the average Polish salary do not entail that a judge’s remuneration should be decreased).

***Question 6:***

***Are people from disadvantaged or marginalized communities represented at all levels of the judiciary? If not, do these communities face obstacles to their appointment or promotion, for example lack of access to certain universities, social networks or professional opportunities? Is there evidence or research that judges’ socio-economic status, professional or educational background has an impact on the public perception of the judiciary as an inclusive, independent, impartial, and fair institution?***

It is worth noting that the system governing the appointment and promotion of judges does not exclude any particular group of people (e.g., due to sex, race, ethnic origin, nationality, religion, belief, sexual orientation); the conditions of appointment and promotion are relevant from the point of view of the office itself. Likewise, recruitment of candidates for the initial judicial training programme (judge traineeship at the National School of Judiciary and Public Prosecution (*Krajowa Szkoła Sądownictwa i Prokuratury*)) does not involve, to any extent, any collection or examination of information which could be used to exclude any social group.

***Question 7***

***What steps do you recommend to safeguard judges from economic capture, or the perception of economic capture? Are financial, asset, and business disclosures adequate to the task? What is the role of ethical codes and rules concerning recusal and conflict of interest in preventing this form of capture?***

It should be pointed out that in its schedule of educational activities for judicial staff, the National School of Judiciary and Public Prosecution incorporates sessions for judges concerning corruption threats present in the exercise of the judicial office. These sessions present model conduct in situations that may put judges at risk of disciplinary or criminal liability due to being involved in corruption-driven behaviour. For the detailed training programme, please consult the website of the National School at https://www.kssip.gov.pl/node/5025.

Furthermore, judges are generally prohibited from engaging in personal and economic relations with individuals, legal persons, and other actors, where said relations could give rise to a conflict of interest and thus adversely affect the perception of the judge as impartial and undermine trust in the judicial office. This prohibition pertains in particular to relations between judges and economic actors. Judges are also under the obligation to refrain from any conduct likely to incite suspicion as to their impartiality.

**Question 8**

***Are you aware of SLAPPs being used by private actors to stifle advocacy on issues of public interest? What steps can be taken to deter SLAPPs, or limit their detrimental impact? Are economic interests distorting justice systems in other ways, such as through litigation financing?***

Essentially, it is difficult to answer a question thus posed, as currently, Poland is not collecting statistical figures for SLAPPs specifically, including in breakdown by type of plaintiff and defendant. SLAPPs are not defined in Polish legislation, whereas Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’) is relatively new, with implementation efforts still at the preliminary stage. We are thus aware that private actors may use SLAPPs to silence public debate; however, determining whether and to what degree these lawsuits are filed in Poland would require detailed analyses.

While there have been lawsuits in Poland which could be classified as lawsuits against public participation, their abusive nature most often concerns not the procedure but the disproportionate protective measures imposed by the court and unforeseeable decisions in this regard. The cases are largely national and not cross-border cases.

The Ministry of Justice believes that in order to deter SLAPPs or limit their detrimental impact, Poland should primarily implement the solutions suggested by the European Commission.

From the point of view of SLAPP victims, in turn, the most important thing is to suggest support mechanisms, so that persons targeted by SLAPPs have access to independent case-by-case support, including free legal aid, and even psychological support.

***Question 11***

***Are there any additional issues you wish to raise with the Special Rapporteur in this context?***

The Ministry of Justice actively works within UNCITRAL on the draft of a new multilateral instrument to implement forthcoming reforms in international arbitration system, in particular to establish a new court or tribunal for investor-state dispute settlement.

During the works, it was considered that a defining feature of the new mechanism is that the selection and appointment of adjudicators should be made on a permanent basis, before and independently of any particular dispute. Adjudicators on a standing mechanism should have fixed terms and be appointed to the standing mechanism by States or bodies composed of States.

The guarantee of independence of the court would ensure the legitimacy of arbitral awards and their enforcement. To achieve this, the selection is to be conducted through a three-step process:

(a) nomination by contracting parties, following open and transparent calls for candidacy and consultations with their national stakeholders, and possibly direct applications of individuals;

(b) screening of candidates by an independent panel;

(c) election and appointment by contracting parties (possibly organised through regional groups).

This process would increase public accountability, reduce risks of politicisation, and create a competitive and sufficiently wide pool of highly qualified candidates.