

**Resolution of the Assembly of Representatives of Judges
of the Regional Court in Kraków of 26 February 2018.
(the extract)**

(...)

2. The Assembly of Representatives of Judges of the Regional Court in Krakow draws attention to the fact that subordinated to the political factors law enforcement authorities have been taking actions of repressive character towards judge Waldemar Żurek for the period of around 2 years. Recently, the newly-appointed President of the Court has also taken actions of repressive character. Above-mentioned actions include:

- interrogations carried out by the Prosecutors Office and the Central Anticorruption Bureau¹ on five different occasions, during an unfounded and groundless investigation pertaining to the control of the financial disclosure declaration which has been open for the past 1,5 years. Moreover, contrary to the rules of procedure, the investigation has been pursued without a formal decision and without a proper announcement for a period of 6 months,
- unlawful entry of the Central Anticorruption Bureau's officials to a closed zone of a Constitutional Organ of Republic of Poland, which is the National Council of the Judiciary², in order to deliver a summon which could have been delivered by postal service,
- interrogation which involved elements of harassment of the parents of judge Waldemar Żurek, who are more than 70 years old,
- unfounded intrusions of the Central Anticorruption Bureau's officials paid to several neighbours of judge Waldemar Żurek, as well as to a person who does and settles his taxes,
- a defamatory campaign in the public media directed against judge Waldemar Żurek, which resulted in a wave of public hate speech which was directed against the judge by means of numerous phone calls and text messages. These also included threats,

¹ Centralne Biuro Antykorupcyjne [pol.]

² Krajowa Rada Sądownictwa [pol.]

- having a character of harassment, dismissal of judge Waldemar Żurek from the position of a spokesman of the Kraków Regional Court, regardless of the fact that a mandatory opinion of the Court College was missing. Subsequently, one of the persons who objected against this kind of conduct – judge Ewa Ługowska – was dismissed from the position of the President of the District Court in Wieliczka,
- unfounded control of the financial situation of judge Waldemar Żurek's wife, who is currently 6 months pregnant,
- control of cases which are decided by judge Waldemar Żurek by the Minister of Justice on the basis of anonymous information.
- attempts to persuade judge Waldemar Żurek's co-workers to express negative opinions about his work.

Taking into account the time and context of the actions towards judge Waldemar Żurek described above, the conclusion that these practices are aimed at putting pressure on the judge and at intimidating him in response to his activities which defend the independence of courts and judges is fully justifiable and valid. These actions, which we unanimously consider as groundless and unlawful, bring to mind the times of persecution and oppression of political opponents of the authority during the times of the Polish People's Republic (PRL)³. These practices are comparable to systems of citizens' control and individual oppression used by special services of authoritarian regimes, which in the past resulted in numerous cases of violations of human rights. The Assembly strongly condemns such actions taken towards the judge, who is also a member and a spokesman of a Constitutional Organ of Republic of Poland, which is the National Council of the Judiciary.

3. The Assembly of Representatives of Judges of the Regional Court in Krakow strongly condemns the practise of instigating disciplinary and criminal proceedings in respect of judges who were rendering decisions not in accordance with the motions of the Prosecutor's Office or when their decisions might be considered as politically inappropriate. Decisions made during court proceedings are subject to an appeal in a normal course of an instance and this is the only one legitimate way of their verification. The unprecedented practise of

³ The official name of Soviet dependant Polish state, under the communist regime, in the years 1952-1989

commencing criminal or disciplinary proceedings on the basis of such decisions constitutes an obvious attempt to intimidate the judges and force them to submit to the executive power and the Prosecutor's Office, which became politicized after a fusion of the office of the Minister of Justice and of the Public Prosecutor General in 2016.

Examples of this sort of groundless proceedings include a criminal case against judge Agnieszka Poświata and judge Małgorzata Czerwińska⁴ who, while acting as chairmen of courts' divisions in Szczecin, assigned for examination motions of the Prosecutor's Office for provisional arrest of former members of the board of a chemical plant 'Police', however, in these cases courts of both instances did not find any grounds for an application of provisional measures.

This kind of court proceeding is also pending before the Regional Court for Kraków-Śródmieście and it is adjudicated by judge Agnieszka Pilarczyk. The case pertains to a medical error which supposedly lead to death of the father of the currently in office Minister of Justice – Public Prosecutor General Zbigniew Ziobro. The subject matter of the case and the moment in which it was initiated, right before the judgment in the case was supposed to be rendered, is a clear indication that it is directed against judge Agnieszka Pilarczyk and it is aimed at intimidating her.

Moreover, in a case pending before the Regional Court in Suwałki, a disciplinary case was groundlessly commenced against judge Dominik Czeszkiewicz. From the context of the case it can be concluded that actions of the President of the Court Jacek Sowul, newly appointed by the Minister of Justice, have an implied political meaning and constitute a form of retaliation for an earlier judgement rendered by judge Dominik Czeszkiewicz in another case, which was adversely evaluated by the executive power.

All practises as described above shall be made public, to make the society aware of the fact that the true intention of the executive power is intimidation of judges in order to make them submit and comply.

At the same time, we call upon our fellow colleagues-judges to ensure that the independence of judges is still the key determinant of their service to citizens, regardless of the consequences.

⁴ According to the information obtained after the Assembly there can be a mistake in respect of the personal data of the judge who assigned the case in the second instance court.

4. The Assembly of Representatives of Judges of the Regional Court in Krakow sustains its position adopted earlier by the Assembly on 4 December 2017 according to which measures taken so far by the executive and legislative authorities in respect of the justice system lead to its destabilization and, above all, to deprive it of independence, aiming at subordinating it to the political factors. Adoption of Laws on the Supreme Court⁵, the National Council of the Judiciary⁶ and the System of Ordinary Courts⁷ result in Poland's withdrawal from the circle of Western legal culture, since they are equal to a violation of basic standards of legal protection of citizens, in the form of the right to a fair trial before an independent and impartial court, resulting from art. 10 of the Universal Declaration of Human Rights, art. 6 of The European Convention of Human Rights and art. 47 of the Charter of Fundamental Rights of the European Union. In this manner, a great step towards returning to the times of Polish People's Republic (PRL)⁸ was made, by moving away from a system based on the principle of three-fold power to a system of monopoly where the authority of the decision-making centre is built on the fear of citizens who are deprived of proper legal protection.

We are positive about the position expressed above, especially when looking at a composition of candidates for the newly-appointed, on the basis of unconstitutional provisions, National Council of the Judiciary. The number of professional and personal connections of these candidates to the Ministry of Justice is so large, that the newly-created body will constitute another organ of the executive power. Taking into account the fact that the new National Council of the Judiciary will make decisions about appointments of judges, including members of the Disciplinary Chamber of the Supreme Court, and the fact that the Minister of Justice can in an arbitrary manner appoint and dismiss Presidents of the Courts, the courts will be directly dependent on the executive power and guarantees of judges' independence will be an illusion.

It also needs to be stressed out that on the basis of interim provisions to the Law on the System of Ordinary Courts, during the last 6 months the Minister of Justice-Procurator General has dismissed 149 Presidents and Vice-Presidents of

⁵ Enters into force on 3rd April 2018.

⁶ Entered into force on 17th January 2018.

⁷ Entered into force on 12th August 2018.

⁸ See footnote 3.

the Courts of different ranks, often on the basis of false or manipulated data. These positions were later often filled-in by people who have no experience in managing courts or who have been convicted in disciplinary proceedings. The only criterion for an appointment was loyalty to the Minister of Justice, which constitutes another element of politicization of the judiciary.

In light of the provisions of the Law on the Supreme Court and on the System of Ordinary Courts, which will enter into force in the near future⁹, disciplinary proceedings against judges and other representatives of legal professions (prosecutors, attorneys and notaries) in disciplinary courts of first instance and in the new Disciplinary Chamber of the Supreme Court will take place in a politicized manner and at the same time they will violate the right to defence, which will be manifested by, among others:

- Selection of judges to the Disciplinary Chamber of the Supreme Court by the politicized National Council of the Judiciary and selection of lay judges to this Chamber by a strictly political organ which is the Upper Chamber of the Parliament,
- Granting judges-members of the Disciplinary Chamber of the Supreme Court an unwarranted by a special workload very high 40 percent allowance (bonus) to their salary, which is of clearly corrupt character and in the judicial environment it has already gained a status of 'Judas' silver' (art. 48 § 7 of the Law on the Supreme Court),
- The possibility to repeal a judge's immunity under the accelerated 24-hours mode of procedure (art. 55 § 2 of the Law on the Supreme Court, art. 106 zd. § 6 'a' of the Law on the System of Ordinary Courts),
- The possibility to continue proceedings in a disciplinary case even in the case of a justified absence of a judge and his counsel (art. 115 'a' § 3 of the Law on the System of Ordinary Courts),
- Granting of very extensive powers in matters of disciplinary proceedings to representatives of the executive power, i.e. the Minister of Justice and the President, including the possibility of filing by the Minister of Justice of a binding objection to a decision of a Disciplinary Proceedings Representative

⁹ In the full scope on 3rd April 2018.

on a refusal to initiate disciplinary proceedings (art. 114 § 9 of the Law on the System of Ordinary Courts),

- A possibility to apply evidence obtained without judicial control and in violation of laws against judges during disciplinary proceedings, including evidence obtained as a result of operational control of telephone conversations (art. 115 'c' of the Law on the System of Ordinary Courts).

The solutions described above result in an introduction of an inquisitional model of disciplinary proceedings against judges and representatives of other legal professions, which will politicize these proceedings and at the same time it will restrict procedural rights of the defendants in such a manner that their position will be significantly worse than the position of defendants in criminal proceedings.

If we add to it politicization of the Prosecutor's Office carried out by a Law enacted in 2016, we are presented with a picture of 'technological sequence' enabling the executive and legislative powers repressions of 'inconvenient' judges by means of criminal and disciplinary proceedings. The fact that the fear of repressions of 'inconvenient' judges is not groundless can be supported by examples of actions which have already been taken and described above¹⁰. Intimidation of judges and politicization of the judiciary constitute a real threat to the preservation of the principles of a democratic country and the rule of law in Poland.

A vision of a state in which judges are either appointed by the political factor, or are subject to surveillance and intimidation conducted in violation of the right of defence by means of disciplinary proceedings constitutes a real threat to the rights and freedoms of citizens.

In light of the above-mentioned circumstances, we consider running for a position in a politicized Disciplinary Chamber of the Supreme Court as unworthy of a judge and shameful. At the same time, we call upon judges not to run for a position in this organ.

¹⁰ See point 3 of the Resolution.

5. The Assembly of Representatives of Judges of the Regional Court in Kraków strongly protests against an unacceptable practice of public denigration of judges by the executive power, especially through extensive public media campaigns. We consider the so-called billboard campaign financed from the funds of the State Treasury to be outrageous and of defamatory and slanderous character. Its current extension is the negative media campaign against judges carried out by the Polish Prime Minister Mateusz Morawiecki, which he is also conducting abroad (e.g. a statement for Washington Examiner published on 13 December 2017¹¹, a statement made during a meeting with President Macron on 15 December 2017, or a statement and written information passed on to European journalists in Brussels on 10 January 2018). It is a plain lie to associate the Polish justice system with a ‘post-communist’ provenance, or to suggest that it is corrupt. In light of written information received through a procedure of access to public information from the Supreme Court by the Association of Judges ‘Themis’, in the last 10 years only one concluded disciplinary case pertained to an offence related to corruption charges. Moreover, the only corruption-related case which is currently pending concerns a former President of the Appellate Court in Krakow, however, in this case the charge of corruption does not relate to the sphere of jurisprudence. The above-described actions of the executive power, consisting of systemic undermining of the authority of the justice system are leading to a disruption of public life in the country and to lowering of authority of Poland in Europe.

(...)

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(...)

We also oblige the authorities of the Regional Court in Kraków, alongside with management boards of the Association of Judges „Themis” and the Kraków Division of the Polish Association of Judges “Iustitia” to translate into English paragraphs No 2, 3, 4 and 5 of the Resolution, and subsequently send the translation to the international organizations, institutions, foundations, societies which are responsible for monitoring of the preserving the rule of law and independence of the judiciary, in particular to: National Councils of the

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<http://www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjwmZD2kNjZAhXDY1AKHRBADswQFggNMAA&url=http%3A%2F%2Fwww.washingtonexaminer.com%2Fprime-minister-mateusz-morawiecki-why-my-government-is-reforming-polands-judiciary%2Farticle%2F2643279&usg=AOvVaw3U445UNo31DCPhztE1e3yu>

Judiciary of the EU Member States, Strasbourg Tribunal, Luxembourg Tribunal, Consultative Council of European Judges (CCJE), European Networks of Councils for the Judiciary (ENCJ), Foundation Judges for Judges, American Bar Association (ABA), European Commission for Democracy through Law, MEDEL, European Association of Judges (EAJ), International Association of Judges (IAJ), International Commission of Jurists (ICJ), Council of Bars and Law Societies of Europe (CCBE), Association of European Administrative Judges (AEAJ), the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Mr Nils Muižnieks – the Commissioner for Human Rights of the Council of Europe, Mr. Diego Garcia Sayan – Special Rapporteur on the Independence of Judges and Lawyers, United Nations Human Rights Council (UNHRC), Amnesty International, United Nations Interregional Crime and Justice Research Institute (UNICRI), European Law Institute (ELI), Central and East European Law Initiative (CEELI Institute), United States Agency for International Development (USAID).