

Resolutions
of the of the Assembly of Judges of the Regional Court in Kraków
of 24 May 2018

1.

The Assembly of Judges of the Regional Court in Krakow is expressing a vote of no confidence towards the President of the Regional Court in Kraków Dagmara Pawełczyk-Woicka and is calling upon her to resign from the position she is currently performing.

Her acceptance of the function of the President of the Regional Court in Kraków took place in violation of the position of fellow judges' environment and it is an expression of disregard of the Polish Constitutional order, since it supports changes which aim at destruction of the principle of separation of powers (*trias politica*) and at destruction of independence of the judiciary. Moreover, the current manner in which the President Dagmara Pawełczyk-Woicka is performing her functions points to the fact that she does not possess required qualifications and professional experience, as well as to the fact that she lacks the ability to cooperate with other organs of the Court. What is more, we believe that through her actions, she is attempting to intimidate the judges in order to subject them to the political factor, whose interests she is representing.

In particular, we condemn such actions of the President Dagmara Pawełczyk-Woicka as:

- Conducting a purge of the Chairmen of the Departments of District and Regional Courts, as well as their deputies, which was not motivated by merit or substantive facts. In particular, this purge has affected SSO¹ Agnieszka Włodyga, SSO Joanna Melnychuk, SSO Janusz Kawalek, SSR² Beata Donhoffner-Grodzicka, SSR Natasza Czarny, oraz SSR Łukasz Sajdak. These actions, motivated by the intention to intimidate the judicial environment and subject it to the political factor, lead to a degradation of merit and substantive level of staff managing the Court. Dismissal of the staff is often carried out in an urgency procedure, without providing real grounds and without indication as to who should become their successor. These practices disorganize activities of courts' departments and can even be described as a threat to the continuity of the courts' work,

¹ Abbreviation of Sędzia Sądu Okręgowego which means Judge of the Regional Court,

² Abbreviation of Sędzia Sądu Rejonowego which means Judge of the District Court,

- Attempting to exert pressure on judges in order to force them to resign from their functions performed or in order to force them in this way to take up indicated positions, e.g. through threats of disciplinary proceedings,
- Obstruction of activities of the Assembly of the Representatives of Judges of the Regional Court in Krakow, which took place on 26 February 2018, consisting of questioning the right of the Assembly to adopt a resolution in the defence of the independence of the judiciary and of subsequent refusal to publish this resolution,
- Obstruction of activities of the College of the Regional Court in Kraków³, by making decisions without obtaining opinions of the College which are required by law, interrupting and silencing its members, not submitting their motions for voting, misleading the members in regards to circumstances relevant for making a decision, refusing to accept the College's work statute, sealing the room when the members of the College intended to meet with the judges, and by deliberately setting the dates of meetings of the College in a way that prevents some of its members from participating,
- Presenting false information in the media which affected the good name and reputation of the Court as a whole, through burdening judges with responsibility for the crisis in the Court, e.g. by blaming the previous composition of members of the College for the fact that sessions in cases III K 71/17 and III K 205/17 did not take place, whereas these sessions did not take place because the President of the Court did not take into account written motions of members of the College to convene an additional meeting of the Collegium on 29 January 2018,
- Setting a limit on the ability of judges to improve and raise their professional qualifications, which was done in an arbitrary manner and not based on letter of the law (art. 82a Law on the System of Ordinary Courts) and forcing judges to take their holiday leave in order to undergo a training (letter from 16.01.2018, KD.SO.-140- 1/1),
- Inducing judges, in an unauthorized manner, to present sensitive data which are not subject to evaluation by the President of the Court (art. 86§5 Law on the System of Ordinary Courts). On the basis of this, the decision on possible filing of an objection in relation to continuation or taking up of work of a scientific or didactic character was made. Moreover, judges were forced to

³ Collective, advisory organ of the President of the court chosen from among the judges by General Assembly of the court.

use their holiday leave during the days on which they had additional classes after working hours (letter from 09/04/2018, KD.SO.-0210-1 / 18),

- Brining in officers of unidentified service on the day on which the President took up her position in the Court. These officers searched, without legal basis, the office which housed, among others, case files. In addition, an explanation as to the reasons why this action was carried out was refused,
- Introduction in the ordinance no 3/18 of 18 April 2018 of a restriction on media access to a court building, which has no basis in the law and is contrary to the freedom of expression and the principle of transparency of public institutions. This applies, among others, to the prohibition of preserving the image of 'parts of the building which contain rooms of the managerial staff of the Court, i.e. offices and secretarial offices of the President, the Vice-Presidents and the Director', as provided for in §1 point 10 and resulting from §7 para. 3 of the order requiring the consent of the President of the Regional Court to conduct an interview or to obtain a statement from a judge on the premises of the Court.
- Groundless cancellation of meetings of the Assembly of Representatives of Judges of the Regional Court in Krakow which were supposed to take place on 17 April 2018 and 16 May 2018. We would like to draw attention to the fact that participation in the Assembly requires, especially from judges who live outside Krakow, a reduction of hours of hearing the cases at court sessions. In connection to the above-mentioned, we consider the cancellation of the Assembly a day before the set date without any significant reasons not only as a manifestation of poor organization of the work of the President of the Court and a blatant disregard of judges, but also as an obstruction of ongoing proceedings.

All of the above-mentioned behaviours are perceived by us as actions in violation of interests of the judiciary, contrary to good manners and sometimes also against the letter of law. As a result, we see no possibility of further work with the President Dagmara Pawełczyk-Woicka. The Assembly also condemns participation of judges in a subordinated to politicians National Council of the Judiciary, including judges from the Krakow region – Dagmara Pawełczyk-Woicka and Paweł Styryna, as well as behaviour of judges who have expressed individual support for them. This is contrary to the adopted resolutions and it can be named as participation in a political fair, which is unworthy of a profession of a judge. We unanimously conclude that Dagmara Pawełczyk-Woicka and Paweł Styryna are not representatives of the judicial environment of

the Kraków region, but political nominees recommended by the Ministry of Justice.

2.

In relation to the launch of work of the unconstitutionally elected and politicized organ, which currently is the National Council of the Judiciary (*Krajowa Rada Sądownictwa*, abbreviation: KRS) on 27 April 2018, we call upon all judges to consider the ethical and legal aspects of participation in procedures in which KRS is taking part. Due to the unconstitutional character of this organ, its decisions, including those of personal nature, might be effectively challenged in the proceedings before national courts, while procedures involving assessors⁴ appointed by this organ might result in liability for damages of the Polish State before international tribunals and in refusal to enforce judgements of the Polish courts beyond the country's borders. We believe that the public service we are carrying out does not allow us to stop rendering judgements in which the judges, newly-appointed with the participation of National Council of the Judiciary, are taking part. However, we should, with the usage of all available procedural means, express the lack of acceptance for the situation which is a result of violations of the Constitution of the Republic of Poland.

At the same time, we would like to draw attention to the fact that the course of the meeting of the new organ described as the National Council of the Judiciary, which took place on 11 May 2018 is a clear indication that this organ's objective is not to defend independence of Courts and judicial autonomy. Conversely, its objective is to intimidate judges and associations of judges which guard these values. This is also indicated by the fact that the resolution formulated on this meeting, as well as statements made by members of this unconstitutional organ, were aimed at gagging the mouths of judicial associations. It has been also announced that disciplinary consequences will be faced by specific judges because of their public speeches made in defence of constitutional values. This will be done by the Ethics Commission and Disciplinary Commission, set up within the National Council of the Judiciary. In this context, judge Waldemar Żurek and judge Igor Tuleya were mentioned by

⁴ Apprentice judges chosen by the National Council of the Judiciary for a 3-4 years long apprenticeship. This institution has been recently re-introduced by the amendment of the Law on the System of Ordinary Courts. However, a similar solution in the past was found as unconstitutional by the Constitutional Tribunal, as European Court of Human Rights in Strasburg stated that such a way of choosing and appointing an assistant judge is not in accordance with "independence of the court of law" /see the case of Miroslaw Garlicki v. Poland on the website of ECtHR, appl. No 3692/07, judgment of 14/06/2011 (<http://hudoc.echr.coe.int/eng?!=001-121945/>).

their names. Both of them had been previously attacked by representatives of the governing political party on several occasions. The statement made by the vice-chairman of the KRS Wiesław Johann about the possibility of instigating disciplinary proceedings against judge Igor Tuleya because of the contents of his speech made during the verbal motives of a verdict should be regarded as simply outrageous. The above-mentioned practice deserves unequivocal condemnation, since it represents a blatant negation of the main objective of the National Council of the Judiciary, which is to uphold independence of Courts and judicial autonomy, as it is enshrined in art. 186 of the Constitution. The spirit of the new National Council of the Judiciary is adequately represented by the appointment of parliamentary representative Krystyna Pawłowicz as a member of the Ethics Commission, who is known for her unethical and improper statements made in the Lower Chamber of the Parliament (*Sejm*). She is also known for the fact, that during the meeting of Parliamentary Commission on 24 May 2017, she concluded that Polish judges should ‘undergo a re-education training in North Korean labour camps which teach democracy’. Active participation of the former prosecutor of the martial law Stanisław Piotrowicz in deliberations is a meaningful emphasis of the systemic comeback to the authoritarian roots of the Polish People’s Republic (*Polska Rzeczpospolita Ludowa, PRL*)⁵. Everything leads to a conclusion that in order to convey the meaning of further activities of the National Council of the Judiciary, the abbreviation *KRS* shall be read as *Judges’ Repression Committee*⁶.

3.

The Assembly of Judges of the Regional Court in Kraków unanimously critically assesses amendments made to the Law on the System of Common Courts, the Law on the National Council of the Judiciary and the Law on the Supreme Court, which were passed in the Lower Chamber of the Parliament (*Sejm*) on 12 April 2018 and further amendments passed on 10 May 2018. These changes, which were adopted by the parliamentary majority in a manner that defies the rules of a democratic country governed by the rule of law, i.e. without a possibility to ask questions and file formal motions by the opposition, do not eliminate constitutional concerns and do not implement recommendations of the European Commission (EU) 2018/103 adopted on 20 December 2017.

⁵ The official name of Soviet dependant Polish state under the communist regime in the years 1952-1989,

⁶ In Polish: **K**omitet **R**epresjonowania **S**ędziów (abbrev: KRS).

The amendment concerning the introduction of a consultation procedure of the decisions of the Minister of Justice in relation to dismissal of Presidents of Courts with the College of a respective court and with the National Council of the Judiciary does not in practice contribute to an increase of independence of the courts. This is the case because of the fact that judges-members of the National Council of the Judiciary are chosen by the Parliament. Therefore, this organ will be politicized and the term of judges-member of KRS will be terminated before the end of the full term in office⁷.

As the Supreme Court pointed out in its opinion rendered on 7 May 2018, limitation of a number of entities which are able to lodge an extraordinary complaint is applicable only to court judgements which became final and binding after 17 October 1997 and before 3 April 2018. However, this does not apply to court judgements which became final and binding after 3 April 2018. What is more, an amendment of the Law on the Supreme Court adopted on 10 May 2018 is extending the Supreme Court's discretion in adjudicating cases initiated by lodging an extraordinary complaint, indicating that one of prerequisites for the admissibility of the complaint is the general clause of art. 2 of the Constitution, which essentially expands the potential field of application of an extraordinary complaint.

Finally, granting the President with a right to appoint judicial assessors instead of a Minister of Justice, does not change the fact that this act will still require a co-signature of the Prime Minister and that candidates for judges will be presented to the President by the National Council of the Judiciary, which is chosen by the Parliament and therefore it is a politicized organ. In this manner, the process of appointment of judicial assessors will remain completely politicized, as will the appointment and promotion process of judges.

The only change which constitute a progress for the future is the fact that the retirement age for men and women was equalized. However, transfer of the right to give a permission for a retirement at an older age from the Minister of Justice to the National Council of the Judiciary does not change the fact that this decision will be taken by a politicized organ, due to the above-mentioned procedure of election of its members.

It also has to be noted that the changes described above are introduced in a situation, where the Ministry of Justice has already achieved its objectives by carrying out a personal purge within the justice department. This purge

⁷ Moreover, this amendment is accompanied by a change of composition of Colleges of Regional Courts, in a manner which will ensure that the majority of judges is coming from District Courts, who, as judges of a lower rank, including especially court assessors, might be more prone to political pressures.

consisted of dismissing and appointing 194 new Presidents of courts⁸ and at forcing to retire many women-judges.

Similarly, the adoption of rules on publication of judgements of the Constitutional Tribunal from 9 March, 11 August and 7 November 2016 in such a way that they will not have any legal effect and with an inclusion of a comment which undermines legality of their publication, is just a purely illusive activity, especially since the requirement of immediate publication is derived directly from art. 190 paragraph 2 of the Constitution.

We assess that the proposed changes are of illusive character and do not serve to restore independence of the judiciary. Their purpose is to achieve a temporary political objective, which is an attempt to reach a compromise with the European Commission, by misleading it about the true purpose of the changes proposed. After the introduction of the above-mentioned amendments, appointment and promotion of judges will still be a responsibility of the politicized National Council of the Judiciary, the political factor will still be able to arbitrarily nominate Presidents and Vice-Presidents of Courts and judges are going to continue to be subject to disciplinary proceedings which will take place in violation of the right to defence and with a possibility to present illegally obtained evidence. Moreover, right of appeal is going to be vested with the politicized Disciplinary Chamber of the Supreme Court. Another indication of an illusive character of these changes is the fact that politicians of the governing political party, in their statements made for public media, cynically claim that these legislative changes do not alter the situation in practise. In addition, after proposing these changes, the Minister of Justice was still rendering negative decisions in relation to women judges who were applying for a permission to adjudicate after the age of 60.

4.

The Assembly of Judges of the Regional Court in Kraków express their firm opposition against unlawful actions of repressive character which were taken towards the former President of the Appellate Court in Krakow Krzysztof S. in the Prison in Rzeszów. These actions consisted of, among others, unfounded and humiliating personal checks and repeated controls of his prison cell, carried out on an everyday basis, as wells as of limiting his access to

⁸ This number includes also 33 Vice-presidents who, after revoking their Presidents resigned from their positions just to show the solidarity with them. Here is the link to the official list provided by Ministry of Justice:

<http://monitorkonstytucyjny.eu/archiwa/3982>

medical care. Regardless of guilt of the accused, which has not been decided yet, it is in the same manner unjustified and unacceptable to treat the person who had been a judge in a privileged way, as it is to treat such person much worse than other imprisoned persons of similar status.

In light of the case law of the European Court of Human Rights, application of specific restrictions to an imprisoned person that cannot be justified in relation to his or her procedural situation, shall be considered as, depending on their severity, degrading and inhuman treatment or even as torture, within the meaning of art. 3 of the European Convention on Human Rights.

The groundlessness of the above-described actions can be supported by the fact that earlier, during several months when the accused was in custody, they were not taken. They were only applied shortly before the initiation of court proceedings which indicates that their aim was to hinder the defendant's preparation of his line of defence.

What is more, taking unfounded repressive actions against a former judge is a part of the executive power's action plan which aims at intimidating and subordinating the judicial environment. Another example of these sorts of actions is e.g. the billboard campaign, or unfounded instigation of criminal and disciplinary proceedings against judges whose decisions were assessed as politically incorrect, which concerns, among others, judge Agnieszka Pilarczyk and judge Dominik Czeszkiewicz.

These kinds of actions are aimed at creating the so-called 'freezing effect' among judges and they are unacceptable in a democratic state operating on the basis of the rule of law.

(...)

6.

We oblige the President of the Regional Court to publish this resolutions on the official website of the Regional Court and to forward this resolutions to the President of Poland, the Minister of Justice, President of the National Council of the Judiciary, First President of the Supreme Court, to the Presidents of Administrative Courts and to the Presidents of Appellate Courts. At the same time, we authorize the associations of judges to deliver the resolutions to the above-mentioned bodies and to translate resolutions No. 1-4 to English and then to send translations to foreign organizations, institutions, foundations, associations concerned with monitoring the rule of law and defence of

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